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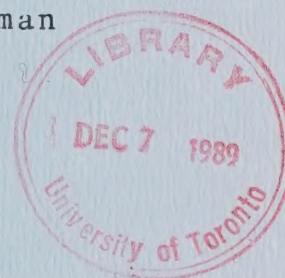
VOLUME: 163

DATE: Wednesday, November 29th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, November 29th,
1989, commencing at 8:30 a.m.

VOLUME 163

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

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MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
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Witness:

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<u>JOHN CARY,</u>	
<u>DAVID GORDON,</u>	
<u>WILLIAM STRAIGHT,</u>	
<u>DAVID EULER,</u>	
<u>JAMES ALEXANDER MacLEAN,</u>	
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1 ---Upon commencing at 8:45 p.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ladies and gentlemen, we indicated last
5 night that we were going to consider the matters raised
6 by Mr. Colborne in terms of his statements of issue and
7 the scope or intended scope of his cross-examination.
8 We have given that some preliminary consideration and
9 we want to handle it in this fashion.

10 The Board feels strongly about the fact
11 that with regard to Mr. Colborne's client or any other
12 party before the Board we cannot engage in areas which
13 the Board considers are beyond its jurisdiction to
14 provide any kind of remedy for that party. This
15 hearing is a very lengthy and complex proceeding and it
16 is not, in the Board's view, in the public interest to
17 extend the proceedings in terms of engaging in areas
18 which are clearly or which the Board determines is
19 beyond its jurisdiction.

20 Accordingly, we do not feel, Mr.
21 Colborne, that we can rule on the areas that you wish
22 to cross-examine Panel 17 upon appropriately until we
23 have determined the issue concerning the licensing and
24 allocation matter that was raised yesterday, and
25 certain document was provided to the Board and to the

1 parties by Mr. Freidin.

2 The reason for that is, is that feel that
3 some of the areas that you indicated you intended to
4 cross-examine upon concern or may concern matters which
5 may or may not be within the Board's jurisdiction
6 depending upon its view of whether it has any
7 jurisdiction in the area of licensing or allocation.

8 Now, we indicated yesterday that the
9 material that was provided to the parties should be
10 reviewed by the parties and discussions held by the
11 parties to determine on a voluntary basis, if they can,
12 if they were in agreement with Mr. Freidin's position;
13 if they are not in agreement with that position, then
14 the Board is prepared to hear submissions and determine
15 that issue.

16 We might further add that we are fully
17 prepared to deal or to entertain the submissions and
18 evidence of any party with respect to alleged impacts
19 from any of the activities which are before the Board;
20 and without going through it, the four activities of
21 harvest, access, regeneration and maintenance, and any
22 impacts that might occur on any of the parties as a
23 result of the Ministry carrying out those activities,
24 whether or not the impacts are felt within the area of
25 the undertaking or, in some cases, outside the area of

1 the undertaking, the Board is prepared to deal with
2 those issues. And those are issues which, in the
3 Board's view, are properly before the Board and clearly
4 within its jurisdiction.

5 When we get to issues concerning
6 entitlement and/or allocation or licensing, then we are
7 entering into an area which is somewhat more clouded in
8 terms of the Board having the jurisdiction to deal with
9 those issues.

10 So what we would like to do is have the
11 parties attempt to consider Mr. Freidin's position on
12 the allocation issue. If agreement cannot be reached
13 by the parties, then the Board will entertain
14 submissions on that probably at some point during the
15 next two weeks and, in that case, it will be done in
16 Toronto probably at the conclusion of one of the normal
17 daily sessions dealing with Dean Baskerville.

18 The Board will be unable to sit on the
19 Friday which is, I believe, December 8th, which is the
20 one day that we won't be sitting to hear Dean
21 Baskerville.

22 Now, Mr. Colborne, in the event that it
23 has to come back before the Board for determination,
24 this allocation matter, we will ensure that you have
25 appropriate notice and it will probably be addressed in

1 the second week.

2 MR. COLBORNE: Very well. Thank you, Mr.
3 Chairman.

4 THE CHAIRMAN: So we can deal with that.

5 With respect to the other issue that Mr.
6 Hanna raised in terms of the Board having the
7 jurisdiction or possibly having the jurisdiction to
8 comment or change the purpose of the undertaking, that
9 is a matter upon which the Board, in a preliminary way,
10 does not feel that it can entertain; however, it may be
11 willing to hear submissions on that in fairness to Mr.
12 Hanna.

13 But it seems to the Board that the
14 proponent has clearly delineated the purpose of the
15 undertaking and we also have before the Board what the
16 undertaking itself is, and we believe there is some
17 jurisprudence on that as to the Board's powers to
18 change either the description of the undertaking
19 and/or, we would submit, the purpose of the
20 undertaking. And the Board is not at all convinced
21 that it has the jurisdiction to do that; however, it
22 may be willing to hear further submissions on that.

23 I don't know whether Mr. Hanna is going
24 to bring that back formally to the Board but we shall
25 have to await his doing so, if he chooses to take that

1 route.

2 With respect to the issue concerning the
3 revised area of concern planning process which Ms.
4 Seaborn alluded to yesterday, Ms. Murphy and Mr.
5 Freidin, we don't know where you stand on that. There
6 was an indication in an earlier panel that it was in
7 the course of being revised and it would be brought
8 back before the Board, at least that was our
9 understanding. Is that not the case?

10 MR. FREIDIN: I think the intention was
11 to file by December the 15th a revised or a
12 standardized form with an accompanying bulletin for the
13 field. We are still on that schedule and hope to be
14 able to meet it.

15 THE CHAIRMAN: All right. Well, we will
16 have to work in cross-examination of the parties on
17 that at such time as it is filed and before the Board,
18 because they will have the opportunity to cross-examine
19 further on those changes.

20 MR. FREIDIN: That is correct. And we
21 intended to sort of I think have Mr. Bisschop and there
22 is actually an outside chance that Mr. Kennedy may be
23 back on that as well, but Mr. Bisschop for sure.

24 THE CHAIRMAN: Okay. Ms. Seaborn, do you
25 want to say something about that?

1 MS. SEABORN: Yes, Mr. Chairman. Just in
2 that regard, it would be our preference if that could
3 be done during the evidence-in-chief on Panel 17 so
4 that we are not into another scheduling situation of
5 bringing back two other people, and it has been my
6 understanding that that could be tacked on with Panel
7 17.

8 It may be after we look at it we are not
9 going to have any questions, so that is why I would
10 prefer to have a look at it and have it presented in
11 that fashion and then if people want to cross-examine
12 while they are doing their Panel 17 cross-examination,
13 Mr. Bisschop will be back anyway.

14 THE CHAIRMAN: All right. That sounds
15 reasonable and we can arrange it in that fashion.

16 We believe those were the outstanding
17 issues. The Board will be issuing its direction
18 regarding counsels' relationship with the media on
19 Friday in Toronto and we will have a copy up here
20 available as well.

21 MR. FREIDIN: I am sorry, Mr. Chairman,
22 could you repeat that?

23 THE CHAIRMAN: We are going to be issuing
24 our directions regarding counsels' relationship with
25 the media on Friday in Toronto and we will have a copy

1 available up here for parties up here.

2 MR. CASSIDY: So that the parties can
3 then obtain it from the Board's office in Toronto on
4 Friday?

5 THE CHAIRMAN: Yes.

6 MR. CASSIDY: Thank you.

7 THE CHAIRMAN: We don't believe there is
8 anything outstanding other than what we have covered
9 this morning, unless parties advise us to the contrary.

10 MR. FREIDIN: Just one matter, Mr.
11 Chairman. I had not been able to determine the date on
12 which we could provide that clearcut outline. We just
13 haven't had a chance to get all the people together.
14 We will try to do that some time today and maybe get
15 back to the Board before you adjourn today; but if not
16 today, early next week.

17 THE CHAIRMAN: All right. And then we
18 will set the notice period for that. We will try and
19 make it reasonable in the sense that we would like to
20 cover that evidence by the completion of Panel 17.

21 MR. FREIDIN: Thank you, Mr. Chairman.

22 THE CHAIRMAN: Okay. Ms. Seaborn?

23 MS. MURPHY: If I can just take a minute
24 to take care of some undertakings and filings.

25 First of all, you had asked a question

1 with respect to the authority to delegate the Minister
2 of Natural Resources and I had advised you that that
3 authority was in the Ministry of Natural Resources Act.
4 I have now obtained a copy of Section 7 of the Ministry
5 of Natural Resources Act which indicates in subsection
6 1:

7 "The Minister may authorize the Deputy
8 Minister or any other officer or employee
9 in the Ministry to exercise any power or
10 perform any duty that is granted to or
11 vested in the Minister under this or any
12 other Act."

13 And sub 2 which indicates:

14 "The Minister may limit an authorization
15 made under subsection 1 in such manner as
16 he considers advisable."

17 So that's that section, sir.

18 Some further information on delegations
19 of authority. I'm providing some portions from the
20 federal Fisheries Act, most importantly part of the
21 regulation in which the conservation officers in the
22 Ministry of Natural Resources are appointed as officers
23 under the federal Fisheries Act. So that is portions
24 of the federal Fisheries Act.

25 I will just indicate, is that -- excuse

1 me are we at 964?

2 THE CHAIRMAN: Yes. I think we will give
3 these regulations and the statute, if it's in a
4 statute, numbers.

5 MS. MURPHY: That's fine. I have three
6 documents here, I will just tell you what all three of
7 them are and look after it.

8 THE CHAIRMAN: All right.

9 MS. MURPHY: So that's 964.

10 The next document that I have for you is
11 a designation by the Minister of Natural Resources,
12 this is under the authority of subsection 2 of section
13 1 of the Provincial Offences Act and this section
14 allows the Minister to designate persons as provincial
15 officers under the Provincial Offences Act. There is a
16 list of designations which indicate which persons in
17 the Ministry of Natural Resources can enforce various
18 legislation including Lakes and Rivers Improvement Act,
19 Public Lands Act, et cetera.

20 So that's a designation by the Minister
21 Lynn McLeod and this one is dated the 3rd of November,
22 1989, designations under the Provincial Offences Act.

23 THE CHAIRMAN: So the first one will be
24 Exhibit 964, the second one would be Exhibit 965.

25 MS. MURPHY: Fine.

1 THE CHAIRMAN: The one you just referred
2 to will be 966.

3 MS. MURPHY: Were you intending to mark
4 the Ministry of Natural Resources Act as --

5 THE CHAIRMAN: Those sections.

6 MS. MURPHY: All right. That is fine, we
7 might as well.

8 THE CHAIRMAN: Yes.

9 MS. MURPHY: And then finally I have one
10 last some document. This is an answer to an
11 undertaking for OFIA on examples of the efficiencies
12 possible in the moose guidelines effectiveness
13 monitoring because of industry cooperation and that is
14 a list of examples that we made a promise to provide in
15 an undertaking.

16 THE CHAIRMAN: All right. That will be
17 Exhibit 967.

18 MR. CASSIDY: I hope there is a 33 page
19 exhibit coming up and we can mark each page as an
20 exhibit.

21 THE CHAIRMAN: We trust you are getting
22 nervous, Mr. Cassidy. We intend to slow down on the
23 exhibit list.

24 MR. CASSIDY: That will be your
25 proverbial error, Mr. Chairman. Of course, Mr.

1 Chairman, if you slow down in time for Mr. Turkstra to
2 enter exhibit 1000, your bill may be rather high.

3 THE CHAIRMAN: Ms. Murphy, we better
4 review the numbers on this because we have got
5 different documents.

6 MS. MURPHY: All right.

7 THE CHAIRMAN: You have got one coming
8 yet.

9 MS. MURPHY: That's right.

10 THE CHAIRMAN: I think an excerpt of the
11 Act.

12 MS. MURPHY: 964 will be an excerpt from
13 the Ministry of Natural Resources Act which I don't
14 have copies of today, that is 964. 965 are excerpts
15 from the Fisheries Act. 966 --

16 THE CHAIRMAN: Just a moment, sorry.
17 966...?

18 MS. MURPHY: Is a designation by Lynn
19 McLeod the Minister of Natural Resources dated November
20 3rd, 1989.

21 THE CHAIRMAN: And 967 is the response to
22 the OFAH Interrogatory?

23 MS. MURPHY: OFIA, that's right.

24 THE CHAIRMAN: OFIA, I'm sorry.

25 ---EXHIBIT NO. 964: Excerpt from Ministry of Natural

1 Resources Act.

2 ---EXHIBIT NO. 965: Excerpts from the federal
3 Fisheries Act.

4 ---EXHIBIT NO. 966: Designation by Lynn McLeod,
5 Minister of Natural Resources,
6 dated November 3, 1989.

7 ---EXHIBIT NO. 967: List of examples of efficiencies
8 in answer to undertaking by MNR
9 to OFIA/OLMA.

10 JOHN EDWARD OSBORN,
11 JOHN CARY,
12 DAVID GORDON,
13 WILLIAM STRAIGHT,
14 DAVID EULER,
15 JAMES ALEXANDER MacLEAN,
16 TOM TWORZYANSKI, Resumed

17 THE CHAIRMAN: Ms. Seaborn?

18 MS. SEABORN: Thank you, Mr. Chairman.

19 Good morning, members of the panel.

20 Mr. Chairman, my questions this morning
21 are going to be dealing essentially with the local
22 monitoring aspects of the evidence as opposed to the
23 provincial monitoring program.

24 There has been a fair amount of evidence
25 on that and there are some aspects that we would like
to discuss with MNR with respect to the provincial
monitoring, but I don't think that those matters are of
such significance that they need to be presented to the
Board and, in light of the upcoming negotiation
process, there are a number of matters that we have

1 decided not to ask questions on today in light of the
2 filing of draft terms and conditions by all parties.

3 Q. Members of the Panel, my questions
4 are going to be mainly for Mr. Straight and Mr. Gordon.
5 I have a few questions for Mr. Cary and I think maybe I
6 have one question for Dr. Euler, so he doesn't feel
7 left out.

8 And if any of the other members of the
9 panel disagree with any of the answers given by their
10 colleagues, I would ask them to jump in and let me
11 know, which I'm sure you will not hesitate to do.

12 Mr. Gordon, I want to begin with you and
13 briefly discuss the concepts of compliance effects and
14 effectiveness monitoring. The evidence has been that
15 compliance monitoring is a set of activities designed
16 to ensure or check compliance with timber management
17 plans for legislation; is that correct?

18 MR. GORDON: A. That's correct.

19 Q. And to put it as Mr. Hanna did last
20 week, it's fairly straightforward, you check to ensure
21 what you plan to be done was actually done?

22 A. Yes, that is what you do.

23 Q. And one of the elements of your
24 compliance monitoring program is the area inspection
25 process; correct?

1 A. That's correct.

2 Q. And the second part of monitoring is
3 the effects/effectiveness monitoring which was
4 described for both timber and non-timber values?

5 A. That's correct.

6 Q. And in terms of effects, as I
7 understand the evidence, Mr. Gordon, they can be either
8 positive effects, negative effects or unknown effects;
9 is that fair?

10 A. I believe so, yes.

11 Q. And for the three provincial
12 guidelines, the ESSA study was developed to look at the
13 effects of the three provincial guidelines?

14 A. Yes.

15 Q. And would you agree that to the
16 extent that effects are known, a judgment has to be
17 made as to whether the effect is positive or neutral
18 and, therefore, acceptable or whether that effect is
19 negative and, therefore, unacceptable?

20 A. That's correct.

21 Q. And if the effect is unacceptable --

22 THE CHAIRMAN: Well, Mr. Gordon, are you
23 indicating that an effect which is negative can
24 nevertheless be adopted; in other words, are all
25 negative effects automatically excluded, the activity

1 causing those effects excluded?

2 MR. GORDON: If that is what my answer
3 meant, definitely not. You may accept some negative
4 effects, you may have to make some tradeoff decisions.

5 THE CHAIRMAN: Right.

6 MS. SEABORN: That is fine, Mr. Chairman.
7 I think I was looking at it in terms of the
8 terminology. I wanted to be clear that when you look
9 at effects you can say they are positive, the effect is
10 neutral, or it's negative.

11 Q. Now, if you have a negative effect -
12 and, Mr. Gordon, I think you would agree with me - and
13 that is unacceptable, whether or not you decide at the
14 end of the day to live with that unacceptable effect is
15 a different question?

16 MR. GORDON: A. I can agree with that.

17 Q. Right. And that is a different
18 question than the judgment in the first instance as to
19 whether or not an effect was negative or positive?

20 A. That's correct.

21 Q. Okay. And if an effect is
22 unacceptable you may have to change your guideline or
23 you may have to change your compliance requirement; is
24 that a fair statement?

25 A. Not necessarily, or you may accept

1 the negative effect.

2 Q. Okay, or you may accept it. But two
3 of the options you have at least is to go back and
4 change your compliance requirement or to change your
5 guideline if an effect is unacceptable?

6 A. And you are not willing to accept it.

7 Q. Yes.

8 A. That's correct.

9 Q. Okay. And, Mr. Gordon, would you
10 also agree that monitoring involves an assessment of
11 the elements of compliance effects and effectiveness
12 working together?

13 A. Not necessarily.

14 Q. Okay.

15 A. Although that can happen.

16 Q. The context that I'm thinking of it
17 in is that Dr. Osborn at the outset of the evidence
18 gave an example of describing how you look at
19 compliance effects and effectiveness and then you have
20 your management loop and you have feedback into
21 compliance. Would you agree with that?

22 A. I'm not following you. Feedback into
23 compliance?

24 Q. That's right. If you have a negative
25 effect and you determine that you weren't effective,

1 one of the ways of dealing with that would be to
2 feedback into your management look back to compliance
3 and perhaps the way to deal with that effect is to
4 change your compliance requirement.

5 A. I probably -- I think maybe what Dr.
6 Osborn said, and perhaps what you mean, is in those
7 instances where you do have an option and you are not
8 willing to accept the negative effect, what you may do
9 is change your plan for the next five-year period to
10 try and negate that negative effect, and then you would
11 monitor compliance against those new objectives.

12 Q. And if you are changing your plan,
13 then essentially you would be changing your compliance
14 requirement; isn't that so?

15 A. Yes.

16 Q. Now, in terms of local monitoring,
17 Mr. Straight, your evidence has been that one of the
18 reasons for MNR staff being in the field is to check
19 for compliance with prescriptions on all areas of
20 operations; correct?

21 MR. STRAIGHT: A. All areas of operation
22 in general which was the evidence of Mr. Cary in areas
23 of concern in specific which would be dealing with
24 protecting the non-timber values, if you will.

25 Q. And if you could turn to page 432 of

1 the Panel 16 witness statement.

2 A. Yes, I have it.

3 Q. And the second paragraph starting in
4 the fourth line states that:

5 "In the course of inspections, staff may
6 observe indications of adverse effects.
7 These would usually be readily observable
8 undesirable situations such as stream
9 siltation or water ponding."

10 Now, Mr. Straight, is it fair to say that
11 when area inspections for compliance are conducted
12 staff can and do make observations regarding the
13 effects of a prescription?

14 A. They do. As I indicated in evidence
15 in chief -- in lead basically that they do have an
16 opportunity to assess certain types of potential
17 effects or observations on certain types of potential
18 effects. And I think in lead we tried to give some
19 indication relative to the aquatic, terrestrial and
20 socio-economic environment of the types of observations
21 we could expect staff to make.

22 Q. And I guess my point is that when
23 your staff is out in the field checking for compliance,
24 there are going to be some effects that they can
25 observe.

1 A. Well, what they may observe is
2 undesirable situations. As to whether or not that is
3 an effect of timber management, that may well require
4 additional investigation to be able to obtain, but in
5 effect what they -- in actual fact what they are doing
6 is making observations during area inspections of
7 potential effects.

8 Q. Okay. And on page 432 you give an
9 example of where there has been compliance with a
10 prescription but an unacceptable effect.

11 MS. MURPHY: 432?

12 MS. SEABORN Yes.

13 MR. STRAIGHT: I describe a situation I
14 believe rather than a specific example. Is that what
15 you are suggesting?

16 MS. SEABORN: Q. That's right.

17 MR. STRAIGHT: A. Okay.

18 Q. You describe a scenario where that
19 may very well be the case, the person in the field goes
20 out and finds that there has been compliance with a
21 prescription but there has been an undesirable effect
22 or observation noted.

23 A. That's correct.

24 Q. And in reading your paper, Mr.
25 Straight, in the witness statement, would you agree

1 with me that on a local level the area inspection
2 process can do more than merely register compliance, it
3 also includes a form of local effects/effectiveness
4 monitoring?

5 A. You have to be very, very careful
6 with what you do with those observations and I think we
7 have tried to very clearly demonstrate that.

8 The assessment of effects of timber
9 management really in total, in a very comprehensive
10 way, can be a very complex situation, and Dr. MacLean
11 in his lead evidence tried to give some indication of
12 the complexity and the type of skills and the type of
13 studies and the costs that you need to make those kinds
14 of effects. And that specifically is the reason we
15 have gone to the design of the provincial monitoring
16 program for effects and effectiveness the way we have.

17 Recognizing those limitations, we also
18 want to take advantage of the opportunities in the
19 field for staff to make observations and you really
20 have to be careful as to what you can do with those
21 observations they make. And when you -- and you build
22 unnecessary or potentially unfulfilled expectations
23 when you give it the context, a general context of
24 being an effects and effectiveness monitoring program
25 at the local level because of the limitations.

1 So if you can accept those constraints if
2 you will, or those bounds, what we really hope to do
3 and we have tried to be very explicit in what our staff
4 are capable of doing and what we can do at the local
5 level in terms of saying observations about effects and
6 effectiveness.

7 Q. I understand all that, Mr. Straight,
8 and I guess my point is quite simple: If you put aside
9 the provincial monitoring program for a moment that we
10 are dealing with the provincial guidelines, and you put
11 aside any long-term studies and long-term research,
12 what I want to focus in on is the local monitoring
13 aspect, the MNR staff that is out in the field.

14 And I think you would agree with me the
15 evidence throughout the hearing has been that MNR
16 relies heavily on its field staff in terms of the work
17 that they do out there, and in fact I think your
18 evidence has been that you want your staff to be out in
19 the field rather than in the office filling out
20 reports; is that fair?

21 A. Yes, that is fair.

22 Q. And I was happy to see when I read
23 your paper starting at 432 that one of the advantages
24 of the new area inspection process is that it is
25 designed on a local level to assist you in determining

1 situations where there may be compliance but a negative
2 effect, or there may be non-compliance and the effect
3 was neutral or in fact positive.

4 And I had understood in looking at the
5 evidence that one of the advantages of this new area
6 inspection process was that staff in the field would be
7 able to make these observations; is that fair?

8 A. That's right. They can make those
9 observations to the degree that can reasonably be
10 expected.

11 Q. Okay. And I fully accept and I think
12 you would agree with me that a field person could not
13 go out and look at a stream and make a note as to
14 whether or not there is an increase or decrease in pH?

15 A. Yes, that's right.

16 Q. And that's not the intent of someone
17 making a notation on an area inspection form of
18 observable effects?

19 A. Yes, that's correct.

20 Q. Okay. And so my point is that in
21 terms of local monitoring, and I thought we may
22 actually even be in agreement on this if you look at
23 page 433 of your evidence at the top, you are talking
24 about the area inspection process and you go on to say,
25 in the second sentence:

1 "The review of these and similar
2 observations helps local managers to
3 assess the effectiveness of prescriptions
4 as they are applied in the local
5 context and to respond with modifications
6 in future when required. In this sense
7 this consistent reporting and review
8 constitutes a local effectiveness
9 monitoring program."

10 Do you see that?

11 A. Yes, I see that.

12 Q. Okay. And my point is that when we
13 are looking at the area inspection process, is it not
14 true that in a local sense it involves more than just
15 compliance, there is an element of effects and
16 effectiveness monitoring bound up in the area
17 inspection process?

18 A. We have tried to provide those
19 opportunities for observations of effects and
20 effectiveness in the area inspection process, yes.

21 Q. Okay. Now, Mr. Cary, your evidence
22 was that the area inspection reports for AOCs will be
23 are summarized in Table 4.12.X?

24 MR. CARY: A. That's right, the area
25 inspection reports on the individual AOC will form the

1 basis for completing 4.12.X in terms of compliance, yes
2 or no, and what happened.

3 Q. Okay. We are going to look at an
4 example in a minute. And I take it the Timber
5 Management Planning Manual will be amended to include
6 Table 4.12.X?

7 A. Yes, that will be the case.

8 Q. And is it your intention to have the
9 area inspection report form included as well in the
10 Timber Management Planning Manual along with the table?

11 A. I don't think that is the current
12 intention. The report form is currently under
13 development.

14 Q. I'm talking about, assuming there
15 is -- once the product is finished. I understand that
16 it's still being developed.

17 A. I don't think it's our intention to
18 include it as part of the TMPM.

19 Q. Would you have difficulty in
20 including that as part of the Timber Management
21 Planning Manual?

22 A. No, I don't think so.

23 Q. Mr. Straight, could you turn to page
24 36 of the witness statement. I just want to look at
25 one of the examples on your Table 4.12.X Now, under

1 area of concern No. 3 White Lake, do you see that?

2 MR. STRAIGHT: A. Yes, I do.

3 Q. Now, this summary indicates that
4 while there was non-compliance with the prescription
5 there was no unacceptable effect; that is, the rookery
6 was not disturbed; is that correct?

7 A. Yes, it says:

8 "Trespass into 60-metre reserve..."

9 Q. Right. So there was non-compliance
10 with the prescription?

11 A. In that case there would have been
12 non-compliance.

13 Q. And the notation that appears below
14 is that regardless of the non-compliance there wasn't a
15 problem with the disturbance of the rookery which was
16 one of the values you were intending to protect in the
17 first instance?

18 A. That's correct, there was no apparent
19 disturbance of the rookery.

20 Q. And I think you would agree with me
21 from your earlier evidence that that's useful
22 information about a local effect to have on record?

23 A. Now and in this particular instance,
24 Ms. Seaborn, this would be as a result of
25 non-compliance, okay.

1 Q. I understand that.

2 A. Okay. So this is something that, in
3 other words, if it had been anticipated -- if it had
4 been achieved as we would have expected, it would -- we
5 would have expected it to be effective. But, yes,
6 okay, this is useful information.

7 Q. Okay.

8 Q. Now, suppose on area of concern No. 1
9 on the second page under compliance assessment there's
10 a yes, if the person in the field doing the area
11 inspection report had observed some sort of effect,
12 would that have been noted on the area inspection
13 report?

14 A. If that person had -- if when the
15 person did the area inspection they noticed, made an
16 observation for example on erosion of the shore?

17 Q. Sure, for example.

18 A. They would have noted that.

19 Q. And would that show up on Table
20 4.12.X beside yes, and then underneath there would be
21 compliance but then there would be a notation saying
22 they had viewed some erosio?

23 A. That may or may not show up in Table
24 4.12.X, in fact it would not. 4.12..X is a table that
25 demonstrates compliance or, in instances of

1 non-compliance, action that was taken.

2 What we would do in instances of
3 repeatedly seeing instances of erosion, for example, as
4 an observation that staff could make, would be to deal
5 with that as a problem in the report of past operation.
6 In instances where compliance was achieved, but
7 prescription -- but obviously we see evidence on doing
8 area inspections and potentially subsequent
9 investigations that we're not reaching the level of
10 prevention of erosion that we would like to see, and we
11 would deal with that as a separate issue in the timber
12 management planning process.

13 Q. I understand that that is how you
14 intend to deal with these things, and I guess my
15 problem is, in looking at this table is that where you
16 have non-compliance and field staff observe something
17 on the area inspection form, that appears to show up in
18 Table 4.12.X?

19 A. That's correct.

20 Q. But in the event that you have
21 compliance and the field person still observes a local
22 effect, I think what you are telling me is that that
23 would not necessarily show up on Table 4.12 .X?

24 A. No it would not, not specifically.

25 Q. And my question to you is that: You

1 are spending money, a considerable amount of money on
2 the area inspection process, you are having field staff
3 out there collecting for compliance, if they make a
4 notation if you will for effects on the area inspection
5 form and if such a notation can make it into 4.12.X for
6 non-compliance, would it be that difficult to include
7 an assessment of effects and effectiveness as well
8 where there was compliance? Wouldn't that be useful
9 information?

10 A. Well, the trouble is you are not just
11 making an assessment of effects and effectiveness, this
12 is what -- when you put down that title of that
13 heading, you are actually providing a misleading
14 heading and I think Mr. Gordon tried to deal with that
15 earlier.

16 Q. Yes.

17 A. Okay. So, first of all, calling it
18 effects and effectiveness monitoring in the scientific
19 sense that we have tried to deal with it here is very
20 misleading.

21 Q. Okay. I don't care what we call it.

22 A. But that is a problem because it does
23 build up unnecessary expectations.

24 Q. I understand that the terminology
25 causes a level of discomfort for you.

1 A. Okay.

2 Q. And I accept that, but just let me
3 finish. I think my simple point is that by your own
4 evidence in terms of local monitoring we do have people
5 out there in the field?

6 A. Yes.

7 Q. Making notations of effects.

8 A. Yes.

9 Q. And to me it would seem quite
10 practical, no matter what you call this last column, to
11 roll up compliance effects and effectiveness for local
12 monitoring together.

13 It doesn't matter to me what you call it,
14 but you have got the people doing it there, you
15 summarize the area inspection reports for areas of
16 concern, and I think it would be useful information for
17 someone reviewing a timber management plan to have that
18 in a table format rather than a paragraph in the report
19 on past forest operations.

20 A. Okay. And we agree that the
21 information can be useful, and the way in which we have
22 suggested that it might be appropriate to deal with it
23 has been to record those observations on area
24 inspection forms. We may record -- and record the
25 results of further investigations as well relative to a

1 specific area of concern.

2 It may well be that you have engineering
3 staff go out and make a separate report, you may have
4 fisheries staff go out and make a separate
5 investigation and report, you may get a number of
6 different specialists to look at a specific situation.

7 Those records would be part of the file
8 that is maintained in the area of concern planning
9 process. In instances of non-compliance, those records
10 and the results of that are reported in Table 4.12.X as
11 you alluded to.

12 What we have said is, is the way to
13 appropriately deal with those other situations where
14 compliance is achieved and yet we are noticing
15 undesirable situations is, is that we will deal with
16 those undesirable situations if they reach a stage
17 where they become significant, if you will, in the
18 timber management planning process as a result of
19 planning for them, considering them in the report of
20 past operations and dealing with them in the problems
21 and issues section of the new timber management plan.

22 Those observations are recorded and are
23 on file at the district. It may well be that the
24 problem in trying to capture them in this table is, is
25 that the range of them can tend to be very variable,

1 the types of observations that people may make. It may
2 be situations of unexpected access in a remote
3 situation which you may feel that you have to -- in a
4 situation where you have tried to protect for
5 remoteness.

6 It may range to the heron rookery
7 instance here where staff report indeed that the herons
8 are still present, or if the herons are absent, and
9 then you can draw very limited conclusions from the
10 presentation or absence of a particular species as a
11 result of one observation on an area inspection form.

12 To report that kind of information and
13 summarize it is of very limited value, and that is one
14 of the -- so we are suggesting that we should use some
15 reason in terms of reporting and dealing with those
16 situations which are problems.

17 MRS. KOVEN: Mr. Straight?

18 MR. STRAIGHT: Yes.

19 MRS. KOVEN: You are not talking about
20 situations that are problems that can be fixed fairly
21 quickly. I mean, if you have a broken bridge or you
22 can do something to fix a problem, surely you wouldn't
23 wait five years to put it in a report of past
24 operations?

25 MR. STRAIGHT: Well, that's correct. And

1 if I recall the example that I used in lead dealing
2 with that, it was a situation which as well that Mr.
3 Pyzer has alluded to where he had made repeated
4 attempts to render a road impassable to protect the
5 remoteness of a particular situation and he continued
6 to alter his strategy or to take efforts to render that
7 impassable.

8 And either looking at that specific case,
9 or you may find in a number of similar cases where you
10 tried certain techniques to render a road inaccessible
11 to prevent a remote tourism operation, that you were
12 being unsuccessful. What you would do at the local
13 level -- what you would do is report that as a problem
14 that needed -- that had to be dealt with in the timber
15 management planning process, and you would likely
16 revise your strategy in those particular instances to
17 deal with the protection of that particular value and
18 you would deal with that and report that in that case
19 in the timber management planning process.

20 In the case of a heron rookery, you may
21 have put a prescription into place, it may -- the
22 prescription may have been complied with. When your
23 staff went there they may have noticed that there were
24 a fewer number of great blue herons there than the
25 person who made the inspection earlier. That one

1 observation is of very, very limited value.

2 The district may decide that it's not
3 worth following up on, and so you now have -- you now
4 have an observation: Do we need to report all of those
5 kinds of observations and this is why we are saying we
6 have to be reasonable in terms of the usefulness of the
7 information and what do you do with it.

8 MRS. KOVEN: What do you see more
9 frequently in those situations, do you see situations
10 that are amenable to some sort of kind of solution or
11 do you see those as difficult to interpret
12 observations?

13 MR. STRAIGHT: In every case in general
14 you are going to have to follow up those situations
15 with some kind of additional assessment, first of all.
16 I think in my own personal experience the kind of
17 observations where you are most likely to be able to do
18 something with to deal with those observations relative
19 to remoteness or where staff can actually see evidence
20 of use, you can see where there has been a trail
21 constructed to the shore of a lake, you can see fresh
22 tracks from quads or four-runners, that sort of thing.

23 And if your intent was to retain
24 remoteness, then that would -- and you made those kinds
25 of observations, that would trigger additional

1 investigations and follow up. You can readily see it
2 in a lot of cases particularly at the site of water
3 crossings, evidence of sedimentation and erosion.

4 To be actually perfectly honest, those
5 are probably the two most common situations where those
6 observations can be of most use and benefit. For many
7 and most other effects the observations you make are
8 really of limited value.

9 If you were intending to protect an
10 eagle's nest and on an area inspection you didn't
11 know -- you noticed the eagle wasn't there, it could be
12 anywhere, you know, it's of limited value by itself and
13 without a lot of intensive follow up and investigation
14 after that, which is not practical in all instances,
15 it's difficult to suggest how far we would take those
16 specific observations that staff make.

17 MS. SEABORN: Q. Can you turn for a
18 moment, Mr. Straight, to Exhibit 946 which is the
19 bundle of Ministry of the Environment interrogatories
20 for this panel.

21 A. Do you have the specific number. I
22 have one here as well.

23 Q. Yes, No. 1, Question 1 on the third
24 page, and you will see the title underlined Non-Timber
25 Values.

1 A. Yes, I have it.

2 MS. SEABORN: Now, the second paragraph
3 there is an interrogatory, Mr. Chairman, posed by MOE
4 with respect to compliance effect and effectiveness
5 monitoring.

6 Q. The second paragraph under point A
7 says that:

8 "While the requirement to conduct area
9 inspections is primarily directed at
10 assessment of compliance with conditions
11 of plan approval, the inspector is
12 expected to know notify of unexpected
13 observable effects of the activity."
14 And then the last sentence states:
15 "This provides a medium although limited
16 information on the effects and
17 effectiveness at the local site-specific
18 level."

19 Okay. Now, I think I said at the outset
20 that I accept that, I don't expect field staff to be
21 doing a level of monitoring in any way, shape or form
22 that Dr. MacLean explained or anything that is
23 equivalent to the provincial monitoring program.

24 And maybe we will just do it this way, go
25 to another example. If you turn to page 37 of the

1 witness statement under No. 5 -- AOC No. 5 Blue River.

2 MR. STRAIGHT: A. Blue River. Yes, I
3 have it.

4 Q. Now, under compliance assessment the
5 notation says no and that means non-compliance?

6 A. Yes.

7 Q. And then there was cut to shore where
8 a 15-metre reserve is left and the effect that was
9 observed was siltation of a spawning bed.

10 Now, is it your position then that had
11 this no been a yes, had there been compliance but the
12 person in the staff -- the person in the field had
13 still observed siltation of a spawning bed, that that
14 local observation would not show up on 4.12.X?

15 A. That specific situation would not
16 have shown up in that specific table had there been
17 compliance, okay.

18 Q. And the reason why I am suggesting
19 this is that the people are in the field anyway, so it
20 would be no more work for them to include that in
21 4.12.X.

22 THE CHAIRMAN: Well, Ms. Seaborn, without
23 going around it again--

24 MS. SEABORN: Okay.

25 THE CHAIRMAN: --I think the Ministry's

1 position based on what they have said is that
2 information is there in the report, it is not in the
3 table, and one of the reasons that they don't want to
4 put it in the table is that a particular observation
5 may be of such limited value that it has to be followed
6 up with investigations in order for it to be
7 meaningful, and that the purpose of the table is
8 essentially to indicate whether there is compliance or
9 non-compliance with a prescription.

10 That is not to say that information isn't
11 available, it's just not in the table, as I understood
12 the evidence, it's in the area inspection reports, all
13 of the observations--

14 MR. STRAIGHT: That's correct.

15 THE CHAIRMAN: --which are available to
16 be reviewed, and the reason that you don't want to put
17 it in the table is essentially, in many cases, you
18 haven't reached any final conclusions or you haven't
19 done enough investigations to make the single
20 observation meaningful enough to find it's way into a
21 summary report. And if it is in the summary report, I
22 believe it's your evidence that it may be in fact
23 misleading.

24 MR. STRAIGHT: That is potentially true,
25 yes.

1 THE CHAIRMAN: So I think the Ministry
2 has been advised of why you think it should be in
3 there, and they have given a reason why they feel it
4 shouldn't be in there, and I don't know where we go
5 from here, other than the fact that I don't think you
6 have got an agreement ut of them that it should be in
7 the report.

8 MS. SEABORN: And, Mr. Chairman, our
9 point is that people want to follow through in our
10 estimation on areas of concern that they identify,
11 following right through to compliance effects and
12 effectiveness shows you the whole package.

13 This table, which we think is great, the
14 whole area inspection process, they outline in their
15 terms and conditions they are asking for a lot of money
16 to carry this out and we think that just registering
17 that what you did out there was actually done is not
18 necessarily that useful to the public who wants to know
19 whether the MNR staff are observing anything else.

20 Now, I won't go any further on this
21 because I take your point, but just if I can put it in
22 the context of why we are interested in this very clear
23 table, it's going to appear in the report of past
24 forest operations, people who review timber management
25 plans on an ongoing basis will be able to look at these

1 tables for the past five-year plan and, in our
2 estimation, it would be useful information because we
3 think what MNR staff do out there in the field is
4 useful information.

5 THE CHAIRMAN: Well, Panel, is this Table
6 4.12.X going to be completed after each and every area
7 inspection? I know there is an area inspection report
8 that comes out, but is the summary table going to be
9 completed after each and every one?

10 MR. CARY: No, the summary report is
11 completed once and we use the area inspection report to
12 complete the table and it's only done once.

13 THE CHAIRMAN: Well, Ms. Seaborn, that
14 would be a suggestion as to why it might not be
15 appropriate, because there may be subsequent area
16 inspections which completely obviate the first
17 observation, and so if you have it in a report and all
18 the person sees from reviewing sees is: Oh, there was
19 an observation, there wasn't an eagle in the nest,
20 noticed no eagles, but the very next one might reverse
21 that.

22 MS. SEABORN: But, Mr. Chairman, that is
23 my point. Someone then -- a member of the public would
24 have to go into the district office and look at every
25 single area inspection report to see how many were

1 done.

2 Presumably when Mr. Cary or whoever is
3 summarizing the area inspection reports for the
4 purposes of 4.12.X, because they are a summary, they
5 can lump things together. If they want to discard one
6 of the area inspection reports because it has become
7 redundant they can do that in the summary and that way
8 the public and MOE staff and anyone else who is
9 interested can look at the summary not at the reports.

10 That is the point and that is why we are
11 interested in this.

12 THE CHAIRMAN: Well, I can understand
13 your concern, but that would probably require a great
14 deal of work for Ministry staff at the end of the day
15 to have to review in each and every one of the reports
16 for the comments. It's easier to review the reports
17 with respect to compliance or non-compliance.

18 MR. GORDON: Mr. Chairman, if I could say
19 something, maybe a summary of MNR's position. The
20 intent of Table 4.12. X is to show whether or not there
21 was compliance with the area of concern prescription.
22 Where there is non-compliance, we will be providing
23 more detail as we have shown in the example.

24 We recognize MOE's concern here that we
25 do have more information available and the public

1 should be aware of that. Where we note through our
2 regular area inspections, whether we are dealing with
3 areas of concern, whether we are dealing with
4 non-compliance or compliance, and we pick up frequently
5 a problem and we consider it significant and the
6 professionals within district who are being paid to do
7 that consider it significant, we will summarize that in
8 the report of past forest operations in a number of
9 pararaphs.

10 And I would suggest to you that that is a
11 better use to the public.

12 THE CHAIRMAN: Okay. Well, we have the
13 two positions. I don't know if we can go much further
14 on it at this point.

15 MS. SEABORN: Q. Just one more quick
16 question on this. Mr. Straight, looking again at page
17 37 on the AOC No. 5.

18 MR. STRAIGHT: A. Yes.

19 Q. If there had have been compliance but
20 siltation of a spawning bed had been observed, would
21 charges have still been laid under the Fisheries Act?

22 A. First of all, I think we want to
23 recognize that this is a hypothetical here in that
24 case.

25 Q. That is fine.

1 A. My good sense is if there was
2 compliance, there would not have been charges.

3 Q. Okay.

4 THE CHAIRMAN: Why is that so in the
5 sense that, as I recall the Fisheries Act, it is an
6 offence to allow a deleterious substance, et cetera,
7 enter into a waterbody, period; there is no mens rea,
8 there is no guilty mind provision in there, it's
9 basically a prohibition against something happening.
10 If it happens you can be susceptible to a charge.

11 MS. STRAIGHT: There is also a provision
12 in there which - and I am not going to begrudge it, the
13 legal terminology - but there is also a provision in
14 the Fisheries Act which exonerates, if you will, an
15 individual or a proponent from being charged under the
16 Act if what they do is done with the approval of the
17 Minister.

18 And, in this particular case, if it was
19 compliance, the individual would have been doing what
20 they were asked to do, and both in terms of the Act and
21 probably also from just reasonable common sense, if
22 people do what the Ministry asks them to do, it doesn't
23 seem reasonable to charge.

24 THE CHAIRMAN: Maybe they should charge
25 the Ministry instead?

1 MR. STRAIGHT: Well, let's not get into
2 that, Mr. Chairman.

3 THE CHAIRMAN: All right, thank you.

4 MS. MURPHY: Mr. Straight is referring to
5 Section 35, sub (1) and (2) just for your information
6 on the Fisheries Act.

7 THE CHAIRMAN: Thank you.

8 MS. SEABORN: Q. Mr. Gordon, area
9 inspections are mandatory for all activities and not
10 just areas of concern; correct?

11 MR. GORDON: A. That's correct.

12 Q. And in normal operating areas then
13 you have MNR staff out checking to make sure that the
14 activity that was proposed on a site was in fact
15 carried out and this would again be noted in an area
16 inspection report?

17 A. Yes.

18 Q. And as is the case for areas of
19 concern, field staff are also supposed to make
20 notations on the area inspection form as to any
21 observable effects?

22 A. Yes, right. If you recall in my
23 lead, for example, given a harvesting operation was
24 taking place, one of the things that we are concerned
25 about is the maintenance of site integrity and we don't

1 consider it a large problem.

2 But if you observe, for example, rutting
3 or excessive bulldozing or local ponding, then we would
4 expect our staff to note that on the area inspection
5 report.

6 Q. And in the sense that I discussed
7 with Mr. Straight, would you agree with me then that
8 for normal operating areas there is also an element of
9 local effects monitoring for timber values?

10 A. When you are carrying out area
11 inspections?

12 Q. That's right.

13 A. Yes. I guess the way I look at it is
14 very simple. The purpose of the area inspection is to
15 monitor compliance and if we pick up some of these
16 observations it's a bonus, and that's simply how I look
17 at it.

18 Q. And I would just like to have a look
19 again at MOE Interrogatory No. 1 which is found in
20 Exhibit 926. And if you could turn to the fourth page
21 of the answer, which is the fifth page of the exhibit,
22 the second full paragraph starts with:

23 "As was noted above..."

24 A. I think I have got it.

25 "As was noted above, area inspections for

1 all activities are mandatory."

2 Q. That's right.

3 A. Okay, I've got it.

4 Q. And then it goes on and says:

5 "Again, while the requirement to conduct
6 area inspections is primarily directed at
7 assessment of compliance with conditions
8 of plan approval, it is intended that the
9 area inspection will also record any
10 observable, unanticipated effects of the
11 harvest activity on the forest estate
12 as well as the effectiveness of the
13 harvest."

14 A. That's correct.

15 Q. And in that sense, would you agree
16 with me that you do have this element of local
17 effects/effectiveness monitoring to do with timber
18 values?

19 A. Could you say that again, please?

20 Q. In light of the statement in your
21 evidence, and I think you said a moment ago that you
22 see observable effects as being a bonus when someone is
23 out checking for compliance, the extent to which
24 effects on timber values can be observed, that is in a
25 sense a local monitoring function?

1 A. What I would say is where we note an
2 effect on the timber estate of the timber management
3 activities and we did not anticipate it and obviously
4 it is observable, then we would ask our area inspectors
5 to make note of that.

6 Q. And they are supposed to include that
7 in their report; correct?

8 A. Yes.

9 Q. Okay. And at the stand level you
10 described in your evidence that you also have
11 silvicultural effectiveness and regeneration
12 effectiveness monitoring and that policy was appended
13 as a reference to your paper; is that correct?

14 I'm referring to Document 3, the paper
15 authored by yourself and Dr. Osborn, and at page 576.

16 A. Yes, 576 relates to the type of
17 survey that Mr. Cary termed as being a technical
18 survey.

19 Q. That's right. And as I understood
20 Dr. Osborn's explanation, he talked about reporting at
21 the management unit level, provincial -- or stand
22 level, management unit level, provincial level?

23 A. Maybe I can be helpful here. I think
24 it was my evidence that we will include in the report
25 of past forest operations an assessment of

1 silvicultural effectiveness and, therefore,
2 regeneration effectiveness.

3 Q. Right.

4 A. So at the management unit level,
5 obviously the way you do that is by summarizing the
6 information you picked up at the stand level.

7 Q. Right.

8 A. But we will be providing an overview
9 for the management unit every five years in the report
10 of past forest operations.

11 Q. And as I had understood your
12 monitoring then for the stand level, is that you have
13 your area inspection reports and then you have
14 silvicultural effectiveness and regeneration
15 effectiveness monitoring? I think those were the three
16 primary ones that were discussed.

17 A. Yes. I, in my talk, was relying more
18 on the technical surveys, although I recognize, for
19 example, when you have the harvest activity taking
20 place you may pick some things up relevant to
21 effects/effectiveness.

22 Q. That's fine. If we could just look
23 for a moment at Exhibit 911, Mr. Gordon, which was a
24 binder that Mr. Campbell filed during Panel 15.

25 THE CHAIRMAN: What is 911?

1 MS. SEABORN: Big green binder, Mr.
2 Chairman. (indicating)

3 THE CHAIRMAN: Right.

4 MR. GORDON: It is the MOE planning
5 manual.

6 MS. SEABORN: Is that approval, Mr.
7 Gordon?

8 MR. GORDON: I guess I have to be --
9 definitely not.

10 MS. SEABORN: Because if it is, I will
11 stop right now.

12 Q. Could you turn to page 10 for a
13 moment, please. That's under Part 1, page 10.

14 MR. GORDON: A. Yes, I am looking at
15 silvicultural ground rules for normal operations for
16 Red Lake Crown.

17 Q. Yes. I think we have seen this
18 excerpt or a similar one numerous times in previous
19 panels and this is, as has been explained earlier, an
20 example of silvicultural ground rules.

21 A. This is an example, yes.

22 Q. Okay. For normal operating areas?

23 A. Yes.

24 Q. And because we are at the five-year
25 term, we are dealing with options; correct? We don't

1 know yet exactly what silvicultural package is going to
2 be applied to what piece of land?

3 A. Yes.

4 Q. Okay. Now, once you reach the
5 monitoring phase of your program, you obviously know
6 which silvicultural packages or ground rules were
7 applied to which stands on the management unit; is that
8 fair?

9 A. In a general sense, yes.

10 Q. Well, say, if someone is going to do
11 an area inspection report to check for compliance, they
12 know what the prescription was, they are checking to
13 make sure that the prescription was in accordance with
14 the plan?

15 A. In a general sense, yes.

16 Q. I am not sure if the 'general sense'
17 has any meaning, but I won't worry about it. And
18 according to the policy that was appended with your
19 evidence, you often do the assessment of silvicultural
20 and regeneration effectiveness at the same time?

21 A. When you are going in to monitor
22 compliance with the management plan?

23 Q. When you are going in to do
24 monitoring after a silvicultural package has been
25 applied, it may make more sense for you to assess your

1 silvicultural and regeneration effectiveness at the
2 same time, as I understood the policy?

3 A. If you were going in to do the
4 compliance monitoring right after the work had been
5 done, it usually would not make sense to be carrying
6 out a bona fide assessment of the silvicultural
7 effectiveness at that time. Usually it is too early to
8 do that right after the treatment. So very often you
9 will be doing that a few years later in a technical
10 inspection.

11 Q. But I wasn't necessarily suggesting
12 that you are always going to be checking for compliance
13 under your area inspection report at the same time as
14 you are doing your technical surveys.

15 All I was suggesting, first of all, is
16 that according to the policy, often the assessment of
17 silvicultural and regeneration effectiveness is done
18 at the same time. You do that in the same visit.

19 A. At the same time as when you go to
20 check compliance?

21 Q. No.

22 A. I'm not getting the nub of your
23 question. Maybe refer me to the policy, please.

24 Q. I'm sorry, I think I am misleading
25 you. I am leaving out an element in terms of the free

1 to grow assessment, that is what I should have been
2 including in; right, you do it with the free to grow?

3 A. Yes. If the purpose of us going out
4 in the field is to make an assessment of whether or not
5 we have effective regeneration or not--

6 Q. Right.

7 A. --that's called a free to grow
8 survey.

9 Q. Right.

10 A. And that could be done 10, 12 years
11 after a specific activity takes place.

12 Q. That's right. So these things
13 happen, there is a continuum, they happen over time?

14 A. That's correct.

15 Q. Okay.

16 THE CHAIRMAN: Ms. Seaborn, could we find
17 a place to take the morning break?

18 MS. SEABORN: We can do it right now, if
19 you like, Mr. Chairman.

20 THE CHAIRMAN: All right. We will break
21 for 20 minutes.

22 ---Recess taken at 10:00 a.m.

23 ---On resuming at 10:35 p.m.

24 THE CHAIRMAN: Thank you. Be seated,
25 please.

1 Whoever is the mysterious benefactor, the
2 Board is thankful.

3 MS. MURPHY: Well, Mr. Chairman, we would
4 like to take this opportunity on behalf of all of us to
5 extend our best wishes to Marilyn Callaghan, our court
6 reporter, who was married this weekend to Enrique
7 Bonaparte, and in honour of the occasion, we have
8 provided monetary morsals which you can find on your
9 desk, but congratulations.

10 WITNESS PANEL: Congratulations.

11 THE CHAIRMAN: The Board also extends its
12 congratulations.

13 THE REPORTER: Thank you.

14 THE CHAIRMAN: Ms. Seaborn?

15 MS. SEABORN: And for those of who
16 weren't aware, I had trouble getting my assistant Mr.
17 Sutterfield to help me with this cross-examination
18 because I understand he was the best man at the
19 wedding.

20 Q. I just want to look briefly, Mr.
21 Gordon, at the policy at page 577 of the witness
22 statement.

23 MR. GORDON: A. Yes, I have it.

24 Q. And under the title: Ineffective
25 Silviculture there is an example that says that:

1 "While your free to grow standard may
2 be met there can be instances where your
3 silvicultural package was not effective
4 as your objective was not met."

5 Is that correct?

6 A. That's correct.

7 Q. Now, with respect to area inspection
8 reports for normal operating areas, Mr. Martel asked a
9 question during Mr. Cassidy's cross-examination to Mr.
10 Cary as to whether these area inspection reports are
11 summarized in a similar fashion as Table 4.12.X. Do
12 you recall that, Mr. Cary?

13 MR. CARY: A. Yes, I do.

14 Q. And I believe the evidence was that
15 these reports are not in fact summarized in such a
16 fashion?

17 A. I think I remember saying that. I
18 haven't got it in front of me, but yes.

19 Q. And am I correct that any technical
20 surveys that are carried out at the management unit
21 level are not summarized in a table in the timber
22 management plan either?

23 A. Some might be. Free to grow surveys,
24 stocking surveys, yes, some of them will be in the
25 timber management plan.

1 Q. In terms of individual tables, but in
2 the context of monitoring there is not a summary table
3 that lists all the technical surveys that are done,
4 some of which are done for the purpose of monitoring?

5 A. No, there is no such list, but
6 technical surveys, as I said, include all sorts of
7 things, and free to grow, stocking survival are
8 technical surveys and there is a summary in the TMP of
9 stocking, for example, free to grow.

10 Q. And in terms of the area inspection
11 reports for compliance, there is no summary though?

12 A. For normal operating areas?

13 Q. That's right.

14 A. That's correct.

15 Q. Okay.

16 MR. GORDON: A. I think I said earlier
17 though that where you identify significant observable
18 problems that you will summarize those in the report of
19 past forest operations.

20 Q. But that would be in a written
21 format?

22 A. That's correct.

23 Q. And would you agree with me that that
24 would entail by someone from MNR some judgments as to
25 what they saw as being the more points from those

1 inspection reports to put in the report on past forest
2 operations?

3 A. That's correct.

4 Q. And would you agree with me, Mr.
5 Gordon, that it would be possible to summarize the area
6 inspection reports and what I would call the other
7 technical surveys that you do for monitoring purposes
8 in a fashion similar to 4.12.X?

9 A. I don't think so.

10 Q. Why not?

11 A. I think there is a better way of
12 summarizing it using some of the tables that are now
13 required. Depending on what kind of technical surveys
14 the management forester has carried out or the staff
15 have carried out, it may be appropriate to design for
16 that individual management unit a specific table that
17 supports what's said in paragraphs of discussion, and I
18 think that's the appropriate way to go.

19 Q. I take it the rationale then for
20 summarizing compliance with respect to areas of
21 concern, Mr. Gordon, is because the Ministry puts a
22 greater priority on areas of concern?

23 A. No, I wouldn't say that we put a
24 greater priority on the areas of concern. Usually an
25 area of concern very often is a value that is important

1 to someone else. So, therefore, recognizing that, we
2 believe it is appropriate to provide more detailed
3 information in the management plan in the report of
4 past forest operations.

5 Q. And if it was demonstrated to you
6 then that there were values that were important to
7 other people that were largely within normal operating
8 areas in terms of timber values, would you agree with
9 me then that it could be useful for that person to have
10 before them a companion table to 4.12.X which I would
11 call 4.11.X?

12 A. I suppose I could agree to that. I
13 would have to know what we are talking about
14 specifically though. I don't agree with -- I don't
15 disagree with the principle.

16 Q. Okay. What I would be looking at,
17 Mr. Gordon, would be something - and I am trying to
18 avoid getting caught up in terminology here - but
19 something that gives you the package for normal
20 operating areas in terms of your compliance effects and
21 effectiveness in one package.

22 Now, if you look at compliance for areas
23 of concern along with observable effects, as Mr.
24 Straight has pointed out, you had that in front of you
25 on a table, that is in the next plan, in the next

1 five-year plan for someone reviewing the plan to look
2 at, what I would be contemplating is for normal
3 operating areas you have got all the area inspection
4 reports anyway, they are however not summarized in the
5 same way as the area inspection reports are for AOCs,
6 so you would summarize those and you would also include
7 on that information any observable effect -- you would
8 also include in that table any observable effects that
9 MNR field staff have noted, as well as any results from
10 the technical surveys which are used at the stand
11 level. That's the concept.

12 A. And in principle I agree with you,
13 and the way MNR is proposing to do that is to provide
14 written summaries that summarize on awful lot of
15 information that you pick up stand by stand, and I
16 would suggest it is inappropriate to include that in a
17 timber management plan.

18 If someone really wants that information,
19 we could make it available to them and, as well, allow
20 the unit manager to develop whatever specific tables
21 will support the summary that he or she feels is
22 appropriate.

23 And the only thing we are doing different
24 relative to areas of concern is we are putting in a
25 special table that clearly notes where we had a

1 compliance problem and we are clearly identifying that
2 for a given area of concern, and that's the only
3 difference. We are doing all the other things.

4 Q. And all I am suggesting is, that for
5 those people who may value more than areas of concern
6 potential effects in normal operating areas, having
7 that information in a table format rather than through
8 a written summary in a timber management plan may be
9 more useful to them?

10 A. I suppose you are going to have to
11 give me an example of what you are talking about so I
12 can get my head around it.

13 Q. Well, I think we have pretty well
14 agreed on the content. I think what you've said for
15 the various technical surveys is that they are
16 summarized in the timber management plan and in the
17 report on past forest operations in a slightly
18 different fashion than I am suggesting?

19 A. That's right. And for me personally
20 nothing comes to mind relative to normal operating
21 areas that's a major concern for the general public out
22 there, the way you seem to be inferring. I need an
23 example for me to go any further and try to be helpful.

24 Q. Well, I guess I am thinking in the
25 situation that we looked at in 4.12 where you may have

1 compliance with your silvicultural package, you went
2 out there and you did what you said you were going to
3 do, but during an area inspection or later on down the
4 line during one of your technical surveys you found you
5 that you weren't in fact effective. That's the
6 situation.

7 A. Right. And what we will do is, where
8 that is happening at a reasonable scale or is
9 considered significant, we will summarize that and that
10 will be available to the public. And if that member of
11 the public is really interested in that and they note
12 that in the report of past forest operations that we
13 have identified something that may be of concern to
14 them and they want to get into more details, then all
15 they have to do is talk to the unit forester.

16 If they want to get into the details of
17 where it happened, exactly what happened in detail,
18 then we will enter into that discussion and make
19 whatever information we have available to that party.

20 Q. I'm not suggesting in the slightest,
21 Mr. Gordon, that you wouldn't make information
22 available to the public if they came in and asked, all
23 I am suggesting is that similar to the treatment you
24 have given areas of concern, that information for
25 normal operating areas would be up front in the timber

1 management plan.

2 And in my understanding of the evidence,
3 and as well as Mr. Martel's question, there is no
4 companion document to 4.12.X where you summarize the
5 area inspection reports, for example, for normal
6 operating areas?

7 A. That's correct. There is no
8 companion table and we don't feel it's necessary.

9 Q. Okay. Mr. Straight, I just want to
10 ask you a few more questions about local monitoring.
11 Would you turn to page 438 of the witness statement.

12 MR. STRAIGHT: A. Yes, I have it.
13 That's Table 1, the start of Table 1?

14 Q. That's correct. Now, in terms of the
15 aquatic, moose and tourism values, there is in addition
16 to the provincial program an element of local
17 monitoring, I think as we have discussed, by way of the
18 area inspection process and stakeholder feedback and
19 that's indicated in the far right-hand column of Table
20 1?

21 A. Yes, that's correct.

22 Q. And I take it from this that public
23 input in terms of both compliance and effects is
24 valuable information for MNR?

25 A. Yes, that's correct.

1 Q. And I note in Table 2, which begins
2 at page 445, you have under the far right column and
3 that column is entitled: Type of Effects and
4 Effectiveness Monitoring, there are a number of
5 categories that refer to local monitoring?

6 A. Yes, that's true.

7 Q. Okay. I don't think it is necessary
8 to turn to them, but with respect to water crossings,
9 the environmental guidelines provide for inspection
10 every three years on naturally abandoned roads and
11 every year on maintained roads?

12 A. Yes.

13 Q. And a member of the public could have
14 input into that inspection process if they were using a
15 road and, for example, saw a blocked culvert or a water
16 crossing that was flooded and closed to washout?

17 A. Yes, the public could provide us with
18 that kind of information and sometimes they do.

19 Q. And, again, that information is
20 useful if a member of the public comes in and tells the
21 district manager that they have spotted something out
22 there that they are concerned about?

23 A. Yes, that information is potentially
24 very useful.

25 Q. And I think in fact in the area

1 inspection form there was a box for public report, and
2 the evidence was that that didn't indicate that the
3 public check compliance there, that would just be an
4 indication that you have received a public report with
5 respect to that area?

6 A. Yes. I think Mr. Cary provided some
7 clarification on the fact that MNR will be doing the
8 actual inspections, but that we certainly do encourage
9 and use information that's provided by the public.

10 Q. And, Mr. Straight, would you agree
11 with me that if a road is closed, then you would lose
12 an element of your local monitoring insofar as you
13 wouldn't have public input past the gate; I mean, the
14 public can't go past the gate and you would lose that
15 element of comment?

16 A. The public may be past the gate.

17 Q. Well --

18 A. I mean, people may go in by
19 traditional areas. They may not comply, first of all,
20 they may have flown in by an aircraft which was
21 legitimate, they may have walked in which is a
22 non-motorized vehicle. There are a number of ways that
23 public could be behind the gate.

24 Q. I understand that that's the case,
25 that often the public is beyond the gate, but that's

1 not the intention, that is not MNR's wish when they
2 gate a road?

3 A. Well, you are generalizing and
4 generally on a road if there is a gate the intent is
5 not to allow the public in general beyond the gate,
6 right.

7 Q. And certainly not in with a vehicle?

8 A. That may well be the case.

9 MS. SEABORN: Mr. Chairman, I want to
10 file a new exhibit. I provided Ms. Murphy with a copy
11 of this letter yesterday. It is a letter dated
12 September 14th from MNR addressed to -- it is actually
13 addressed 'Dear Sir' but I understand that it was a
14 letter that was sent out to members of the public who
15 were on the timber management mailing list for the
16 Domtar/Armstrong Management Unit. That would be
17 exhibit...?

18 THE CHAIRMAN: 968.

19 MS. SEABORN: Thank you. (handed)

20 THE CHAIRMAN: Thank you. Can we have an
21 extra one, please?

22 MS. SEABORN: Sorry, Mr. Chairman.

23 ---EXHIBIT NO. 968: Letter dated September 14th from
24 MNR to members of the public
re: Domtar/Armstrong management
25 unit.

1 MR. STRAIGHT: Ms. Seaborn, do I need to
2 have a copy of that?

3 MS. SEABORN: Oh, I'm sorry. I provided
4 a couple of copies to Ms. Murphy yesterday, I thought
5 you and Mr. Gordon had one.

6 MR. GORDON: I have one.

7 MS. BLASTORAH: Mr. Chairman before we
8 move on from the last question, I had one point of
9 clarification.

10 Ms. Seaborn - I think it was an
11 unintentional way of expressing things but I would like
12 to clarify it - she asked Mr. Straight about road
13 closure and the effect of that closure on the public
14 being behind the gate. I think he indicated that the
15 public could still go in by traditional means, by
16 walking and flying and so on and I want to clarify.

17 Ms. Seaborn indicated that certainly the
18 intent was not to have people behind the gate, which is
19 consistent with what Mr. Straight said in terms of
20 driving down the road, but her comment was 'certainly
21 not in with a vehicle'.

22 I want to clarify that that is not to say
23 that someone could not go behind the gate other than in
24 a vehicle and as well that was not the intent, that
25 certainly wasn't the evidence of Panel 14. I want to

1 clarify that point. I don't think that was the intent
2 of her comment, but I just wanted to clarify that.

3 THE CHAIRMAN: Well, what was your
4 intent, Ms. Seaborn?

5 MS. SEABORN: Well, to me if the road is
6 gated they are going to walk in and fly in and perhaps
7 people go in on snowmobiles in the wintertime.

8 My suggestion is that if a road is gated
9 and someone goes up it in a vehicle, then presumably
10 the message to the public is that they are not to drive
11 beyond that gate. If they get out and choose to hike
12 in that's a perfectly different question. So in that
13 sense I don't think I am in disagreement with Mr.
14 Straight.

15 MS. BLASTORAH: That was the
16 clarification I sought, Mr. Chairman.

17 THE CHAIRMAN: Okay, Thank you.

18 MS. SEABORN: Q. Now, with respect to
19 this letter, Mr. Straight, did you review this
20 correspondence over the evening?

21 MR. STRAIGHT: A. I did not have an -- I
22 did not see this particular correspondence last night.

23 MS. MURPHY: And I apologize. My friend
24 did give that to me last night, I provided it to Mr.
25 Gordon and asked him to get some further information

1 and I just neglected and forgot to give it to Mr.
2 Straight.

3 MS. SEABORN: That's fine. I can ask Mr.
4 Gordon.

5 Q. Mr. Gordon, you have read this
6 four-page material?

7 MR. GORDON: A. Yes, I have.

8 Q. And as I understand this notice, it
9 is with respect to a request that a local outfitter
10 made for the realignment of a road corridor?

11 A. That's correct. My understanding in
12 talking with the unit forester for the management unit
13 yesterday was that there was an approved location in
14 the timber management plan, and this plan was written
15 under the old system.

16 And if you look at the map which is on --
17 if you look at the last page, this one outfitter had a
18 camp on the lake called Gart Lake on the right-hand
19 side of the page and, as well, you will see coming out
20 of Gart Lake is the Big River.

21 Q. Yes.

22 A. And if you go towards the left-hand
23 side of the page, he or she also had a camp down there.
24 So he agreed with the approved location recognizing
25 where the two camps were.

1 Since the plan was approved, the
2 ownership of those two camps had changed and so there
3 was a separate owner for the one in Gart Lake and a
4 separate owner for the one downstream on the Big River.
5 And when the district manager met with the local
6 outfitters to advise them of what was going to happen
7 in the upcoming year, the outfitter downstream asked if
8 the road could be moved further away from his camp.
9 And so they went through a review process and they came
10 up with a new approved location.

11 Q. I was a bit unclear when first
12 reading this, but I understand looking at the map on
13 the last page these are corridors, and it says approved
14 road location, proposed road location. We are not
15 talking about moving -- abandoning a road that had
16 already been built, we are just dealing with corridors;
17 is that correct?

18 A. Yes, as far as I understand, the
19 constructed road was a number of miles to the south.

20 Q. Right. Now, looking at the third
21 page of Exhibit 968, you will see, Mr. Gordon, that
22 there are two roads that form a V?

23 A. Yes, I see that.

24 Q. Okay. On the left-hand hand side of
25 the V, can you confirm for me that's the McKinley Lake

1 Road?

2 A. I'm sorry, I can't.

3 Q. It is my information that it is
4 McKinley Lake Road.

5 MS. SEABORN: The reason why I bring this
6 to your attention, Mr. Chairman, is we filed an
7 interrogatory with respect to this particular
8 management unit in Panel 8, and that's Exhibit 412,
9 which I had asked Ms. Devaul to provide to you. I
10 don't think it is necessary for you to go to it, but
11 the question that we asked was:

12 "Over the past five years on the
13 Domtar/Armstrong Company Management
14 Unit..."

15 I am sorry, we asked about with respect
16 to gating of roads and the answer was that:

17 "Over the past five years on the
18 Domtar/Armstrong Company Management Unit
19 five new primary access roads have been
20 constructed of which three are gated."

21 The gated roads, one of the gated roads
22 that is referred to in the interrogatory response is
23 the McKinley Road and it's my understanding that if you
24 look at the third page of this document the McKinley
25 Road is on the left-hand side.

1 MS. MURPHY: Mr. Chairman, I just rise.
2 When this document was provided to me last night it was
3 indicated to me that some questions would be asked
4 about it.

5 I asked my friend specifically what kind
6 of information would the witness need to respond and I
7 got very little in the way of direction other than just
8 phone up and ask about this document which is an
9 amendment document.

10 The witness of course last night did what
11 he could, but I am concerned that he is now being asked
12 some fairly specific information which he wouldn't have
13 asked for and we weren't asked to obtain.

14 THE CHAIRMAN: Well, in that case he will
15 just have to respond it is not within his knowledge.

16 MS. MURPHY: Well, again then, the fact
17 that this may or may not be the McKinley Lake Road is
18 not evidence, that's my concern.

19 THE CHAIRMAN: Well, she has indicated to
20 the Board that it is her understanding it is McKinley
21 Lake Road. The witnesses cannot confirm that, Mr.
22 Gordon has stated that, that's clearly on the record.

23 I don't think that prevents Ms. Seaborn
24 asking some questions on the assumption, subject to
25 verification, that that is the McKinley Lake Road.

1 MS. SEABORN: And, Mr. Chairman, in the
2 public notice on page 2 of this document it says in the
3 second paragraph:

4 "The proposed amendment would move the
5 McKinley Lake Road one kilometre
6 northeast from its approved location
7 where the road crosses the Big River."

8 Now, all I am trying to establish through
9 documents that have already been filed is that that
10 road has been gated.

11 And what I wanted Mr. Gordon to confirm
12 for me is that looking at the two roads on the maps, so
13 there was no confusion, the McKinley Lake Road was the
14 one in the left-hand side of the V.

15 Now, he said he is not sure and that's
16 fine, that's my information. If MNR wants to come back
17 and tell me I am wrong, I will have to accept that.

18 Q. Now, it is my information that the
19 McKinley Road, Mr. Gordon, is approximately 15 miles
20 long and the gate that is on that road is at
21 approximately mile 6. Are you aware of that
22 information?

23 MR. GORDON: A. No, I can't comment on
24 that.

25 Q. And the gate is situated before the

1 amendment area. Would you agree with that?

2 A. I believe you are correct, but I am
3 not 100 per cent sure. I just don't know the details.

4 Q. Well, I am just saying that from
5 common sense in that the amendment area has to do with
6 road corridors and I assume you are not gating a
7 corridor?

8 A. Right.

9 Q. So the gate must be before we hit the
10 amendment area, that's all I was suggesting.

11 A. Yeah. I must apologize to the Board.
12 When I talked to the unit forester I took the tackle
13 and asked questions, was -- and this is Panel 16 and we
14 are dealing with monitoring, and I advised the unit
15 forester that, you know, Panel 15 had dealt with
16 planning issues, so I didn't get into any details about
17 planning issues. I specifically asked, because I
18 wanted to be ready, I said: Well, what type of
19 monitoring questions do you think I am going to get.

20 THE CHAIRMAN: Well, I don't think the
21 Board can criticize in any way, Mr. Gordon, your
22 attempts to find out information.

23 You were provided this information at a
24 late date, you attempted to find out what you could do
25 about it, not knowing what questions would be asked,

1 and that is the problem of counsel that provide
2 documentation in this fashion without giving an
3 indication of where their questions are going to lead
4 so that you can properly prepare yourself.

5 So you answer the questions put to you to
6 the extent that you can and indicate clearly where you
7 can't answer them.

8 MS. SEABORN: Q. Looking at the last
9 page, Mr. Gordon, there is a star on the map that
10 refers to an eagle's nest.

11 MR. GORDON: A. Yes. It is my
12 understanding that that may be an eagle's nest or it
13 may be an osprey nest. That's based on my conversation
14 yesterday. It is definitely a stick nest.

15 Q. Right. And my point is really quite
16 simple, Mr. Gordon, in terms of this notice: This is a
17 notice that was sent to members of the public asking
18 them to comment on a road corridor change.

19 Now, it is my information that the
20 McKinley Road is 15 miles long and the gate appears at
21 mile 6. Would you agree with me that if someone wanted
22 to go in and look at that area they would be prevented
23 from doing so, whether it was to view the eagle's nest
24 or to go in and look at the water crossings over the
25 Big River or for whatever purpose, they would not be

1 able to get beyond the gate subject to the comments
2 that Mr. Straight made about hiking in?

3 A. First of all, I would like to make a
4 comment before I answer your question.

5 No. 1, the two new tourist outfitters
6 that were involved, they were satisfied with the new
7 location. It is my understanding that there was two
8 other people who commented on the proposal and there
9 was no problem identified by those individuals, and I
10 would suggest to you, and I should not be second
11 guessing the district manager, but I am going to try
12 and answer your question.

13 If someone had a bona fide reason for
14 wanting to get up and look at that site and they
15 presented that rationale to the district manager and
16 the gate closing says you can't go up there, I would
17 suggest that the district manager would listen to that
18 rationale, and if that individual has a bona fide
19 reason for going up there he would make an exception.
20 Again, you have to recognize I am second guessing the
21 district manager because I don't know exactly what
22 happened.

23 Q. And I can agree with you, Mr. Gordon,
24 that it is my understanding that that is the practice
25 in the sense that if someone came in and said they did

1 want to go beyond the gate into an area they would be
2 allowed to do so.

3 My only point is that in terms of a
4 public notice going out, there is no indication in that
5 notice that that would be possible for someone. There
6 is no indication in the notice that the road is gated
7 so that someone who received this in the mail and wants
8 to go have a look at the new corridor may drive up
9 there and find that there is a gate there and there
10 would be no opportunity. On the other hand, you are
11 sending out a public notice asking for public input.

12 A. I understand your concern and perhaps
13 the public notice could have been clearer, but I would
14 suggest to you that if someone did have a concern they
15 probably would have some local knowledge about the area
16 and they would know that there was a gate there.

17 Q. In your view, in a situation such as
18 this where you do have areas of concern that are beyond
19 a gate, do you think that anything additional should be
20 done in terms of local monitoring to compensate for the
21 fact that you would be unlikely to have public input
22 with respect to monitoring of those areas of concern?

23 A. No.

24 THE CHAIRMAN: Well, I think it is a
25 quantum leap, Ms. Seaborn, to assume there may be no

1 public input. There may be no easy access for the
2 public to view whatever the problem or area of concern
3 is all about, but that doesn't necessarily mean that
4 they aren't going to have input.

5 MS. SEABORN: No, Mr. Chairman, my
6 suggestion is that the public would not be in a
7 position to go and observe those particular areas of
8 concern because they would not be able to get in.

9 THE CHAIRMAN: Unless they requested
10 access.

11 MS. SEABORN: And my point is quite
12 simple: There has been problems that have been brought
13 to my attention where members of the public would like
14 to go into areas beyond gates to view either areas of
15 concern or areas of normal operations, and all I am
16 pointing out is that this is a concern.

17 MS. MURPHY: Well, does my friend recall
18 evidence about these concerns?

19 THE CHAIRMAN: I don't know.

20 MS. SEABORN: Well, there has been other
21 evidence about these concerns.

22 THE CHAIRMAN: But apart from that
23 question, Ms. Murphy, Panel, is there any problem that
24 you can foresee in putting a statement in these kinds
25 of notices indicating if the public wishes access with

1 respect to the matters or the area of concern covered
2 by the notice, such would be allowed upon request to
3 the Ministry or words to that effect?

4 In other words, there is a clear
5 indication in here that you do have a right to see it
6 if you request it and that right is effectively set out
7 in the notices to parties to know that in advance.

8 MR. GORDON: I think that's a good idea.

9 THE CHAIRMAN: Would that alleviate your
10 concerns, Ms. Seaborn, or that of your client, that
11 kind of statement put in the notice itself?

12 MS. SEABORN: It would certainly be one
13 step that would be very helpful, Mr. Chairman.

14 MS. MURPHY: Bearing in mind of course
15 there is no road here. I mean, whether anyone can get
16 behind the gate is irrelevant in my view, the point is
17 there is no road.

18 MS. SEABORN: Well...

19 THE CHAIRMAN: Well, perhaps in that
20 example, but we are dealing with the question of
21 providing the opportunity for the public to observe the
22 subject matter of what the amendment is all about. And
23 if there is some kind of prohibition, whether it is
24 under the Public Lands Act or anything else, for them
25 observing it freely, it appears that it is not the

1 Ministry's intention to prevent that observation and
2 will in fact accommodate it.

3 But the concern is the public may not
4 know that and the way to get around that, in the
5 Board's view, probably quite simply is to put something
6 to that effect of that right in a notice.

7 MR. GORDON: Yes, that's correct, Mr.
8 Chairman.

9 MS. SEABORN: Mr. Chairman, in response
10 to Ms. Murphy's comment, of course there is no road, we
11 are talking about road locations on the last page.

12 On the third page though there is a V
13 that marks two roads, the McKinley Road is on the
14 left-hand side, it leads into the amendment area. My
15 information is that there is a gate at mile 6 of the
16 15-mile road that leads in the amendment area. My
17 point is, if someone wanted to get into the amendment
18 area it would be a long walk.

19 Q. Mr. Gordon, you will recall that in
20 your evidence-in-chief Ms. Blastorah invited you to
21 comment on three pages from Exhibit 911 which is the
22 green binder that was filed by Mr. Campbell during our
23 Panel 15 cross-examination?

24 MR. GORDON: A. Yes, I recall that.

25 Q. And were you aware that when we

1 introduced these pages we made a point of confirming
2 with the witnesses in Panel 15 that there was a wide
3 variability in the documentation and level of analysis
4 that is currently being provided in the AOC
5 documentation?

6 A. Yes.

7 Q. And were you aware that in putting
8 forward our suggestions for ways of documenting an AOC
9 package as one example, we explained that we had taken
10 our concepts from a variety of recent timber management
11 plans and the training material?

12 A. Yes, I was fully aware of that.

13 Q. And one of the things that we found
14 in recent timber management plans was reference to
15 effectiveness monitoring.

16 A. Yes, I understand that.

17 Q. Okay. Now, in response to Ms.
18 Blastorah's questions you and Dr. MacLean gave evidence
19 that you felt that delivery of a local effectiveness
20 monitoring program was unworkable. Is that a fair
21 summary of your position?

22 A. Yes. We didn't feel that it was
23 appropriate to outline a proposed effects/effectiveness
24 monitoring plan within the timber management plan.

25 MS. SEABORN: Now, Mr. Chairman, I

1 considered how to deal with this matter and I was
2 thinking about going back to all of the timber
3 management plans that we had reviewed very carefully
4 and taking the Board through the examples and our
5 rationale for putting in our version of an AOC planning
6 package that included compliance and effectiveness
7 together.

8 I think that for a variety of reasons and
9 for the main reason being that these are details that
10 we see are more appropriately left to matters of
11 negotiation, I am not going to do that, and we are
12 prepared to leave this matter to the negotiation
13 process.

14 And the only other point that I want to
15 make is that, in our view, if you are checking for
16 compliance and noting observable effects, effectiveness
17 can be assessed at the local level. And I don't want
18 to get caught up in semantics again with witnesses as
19 to what it is called and I don't want to get caught up
20 in whether what we are proposing is a local
21 effectiveness monitoring program, because when I use
22 the word program that seems to cause a level of
23 discomfort among the witnesses.

24 I think what we are proposing is
25 something much simpler than that and, for those

1 reasons, rather than dealing with it now in front of
2 the Board, we intend to deal with it in February and
3 see how much headway we can make.

4 THE CHAIRMAN: Very well. And then of
5 course you will have the opportunity in your own case
6 to put it forward if you don't make sufficient headway.

7 MS. SEABORN: That's correct. I just
8 wanted the Board to be aware as to what our position
9 was on that because we view this as being very
10 important.

11 THE CHAIRMAN: Very well.

12 MS. SEABORN: Q. Mr. Gordon, could you
13 turn to page 516 of your Panel 16 witness statement.
14 If you look at the second full paragraph.

15 MR. GORDON: A. Yes, I have got it.

16 Q. And the last sentence says:

17 "OMNR through its representation on the
18 Ontario Forestry Research Committee will
19 be approaching the Canadian Forestry
20 Service with the aim of developing a
21 study to assess the effects of tree
22 biomass removal by harvesting on new
23 forest growth and yield rates."

24 Has that approach occurred to date?

25 A. Yes, we have communicated our desire

1 to discuss this in an Ontario Forestry Research
2 Committee meeting and it is my understanding it will be
3 on the agenda for the meeting that is tentatively
4 scheduled for I believe April 17th, 1990.

5 Q. And a study of this nature is not
6 referred to that I could find in MNR's draft terms and
7 conditions; is that correct?

8 A. That's correct.

9 Q. Do you have any objection to
10 including the provision for this study in the terms and
11 conditions?

12 A. I would prefer to wait to when it is
13 discussed at the Ontario Forestry Research Committee
14 and see what comments they have and that would affect
15 the wording of any such condition.

16 Q. Okay. I guess my concern is that it
17 looks like that's not going to be discussed again until
18 April, 1990 and we are going to be looking at terms and
19 conditions prior to that date.

20 MS. SEABORN: And that is certainly a
21 study that our client views as being important, Mr.
22 Chairman.

23 THE CHAIRMAN: Well, it could certainly
24 be put in any draft term and condition because those
25 terms and conditions may well be revised to some extent

1 as process unfolds.

2 MS. SEABORN: Yes, thank you.

3 Q. Mr. Gordon, I don't think it is
4 necessary to go to it, but in Exhibit 913, which was
5 the MNR terms and conditions that was highlighted -- do
6 you recall that version of the terms and conditions.
7 The provisions aren't changed, it is just that it was a
8 highlighted version by MNR?

9 A. I would like to get my terms and
10 conditions.

11 Q. Sure.

12 A. Okay. I have got a complete set of
13 MNR's draft terms and conditions.

14 MS. MURPHY: I don't think the witness is
15 familiar with the difference between what he has in his
16 hand and Exhibit 913.

17 MS. SEABORN: Q. Well, Mr. Gordon, my
18 understanding was that Exhibit 913 was intended to be
19 an indication from MNR as to those terms and conditions
20 which are new in the sense that they are not referred
21 to in the Class EA Document or in the Timber Management
22 Planning Manual. Are you aware of that?

23 MR. GORDON: A. No, I'm not.

24 Q. Okay. Is anyone else on the panel
25 aware of that, Exhibit 913?

1 MR. CARY: A. No.

2 Q. Mr. Gordon, with respect to the
3 funding requirement, can you confirm for me that the
4 estimates relate largely to funding of what I would
5 call new terms and conditions in the sense that you are
6 talking about funding of terms and conditions above and
7 beyond what is already provided for in the Class EA?

8 MS. MURPHY: He just said he is not
9 familiar with this document and doesn't know which ones
10 are new. I don't know how he can respond.

11 MS. SEABORN: Well, Ms. Murphy, perhaps
12 you can speed it up for me then. I don't want to have
13 to go through each one. It was my understanding, and
14 if we compare Exhibit 913, which is the highlighted
15 version of the draft terms and conditions, with Mr.
16 Gordon's Exhibit 936 where he has estimates for draft
17 terms and conditions, the estimates relate largely to
18 those terms and conditions that were highlighted.

19 MS. MURPHY: Well, I am going to have to
20 do this to speed it up. I am not familiar with Exhibit
21 913 either. Frankly, at the end of Panel 15 we were
22 busy preparing Panel 16.

23 Perhaps my friend can simply let me know
24 what her question is and we will respond in due course
25 when I have a chance to look at and ensure we are

1 giving her the appropriate answer to the appropriate
2 question.

3 MS. SEABORN: Okay, well, that's fine.
4 What I would like to know Ms. Murphy, are there any --
5 in Exhibit 936 which are the funding estimates, with
6 respect to estimates of new funding, does any of this
7 new funding relate to matters that are in the terms and
8 conditions that are not highlighted in the sense that
9 they are already covered in the Class EA?

10 My comparison is that if you look at the
11 terms and conditions in Exhibit 936 they largely relate
12 to the same terms and conditions as are highlighted in
13 Exhibit 913. That's all I want you to confirm.

14 Q. And, Mr. Gordon, would it be fair to
15 say that the costs associated with implementing the
16 terms and conditions are the costs of good timber
17 management. Would you agree with that statement?

18 MR. GORDON: A. Just give me a moment on
19 that one, please.

20 Q. Certainly.

21 A. Yes, I would say it is the cost of
22 carrying out good timber management, and perhaps even
23 going further because of what some of the studies
24 entail, in general terms good resource management.

25 Q. Thank you.

1 Q. And maybe Mr. Straight is the best
2 person to answer this question. Mr. Straight, could
3 you turn to page 17 of the terms and conditions.

4 MR. STRAIGHT: A. This is Exhibit 700?

5 Q. Yes, or Exhibit 913. It doesn't
6 matter which one.

7 A. Page 17. I have it, yes.

8 Q. And under term and condition No. 40
9 there is a list of MNR's approved implementation
10 manuals, guidelines, et cetera; correct?

11 A. Yes.

12 Q. Now, if you go over to page 18 under:
13 "Construction and operational manuals
14 include..."

15 A. Yes.

16 Q. And the last one is the Code of
17 Practice for Timber Management Operations in Riparian
18 Areas, 1989. Is it your understanding from these terms
19 and conditions that the Code of Practice has the same
20 status as the Environmental Guidelines for Access Roads
21 and Water Crossings?

22 A. The same status in what context, Ms.
23 Seaborn?

24 Q. Well, in the sense that it is lumped
25 in with the construction and operational manuals and

1 where I read in the evidence requirements for use of
2 construction, operational manuals I can include in that
3 the Code of Practice as being one of those manuals?

4 A. We have lumped it in that particular
5 category, as I would understand it - and Mr. Cary or
6 Mr. Gordon may be able to help if I run into trouble
7 here - my understanding is it deals with operational
8 matters, that's why it is specifically in there. My
9 understanding is that its application is considered to
10 be mandatory, if you will, and in that context it has a
11 similar status as things like the Environmental
12 Guidelines for Access Roads.

13 Q. Thank you.

14 A. Is that correct, Mr. Cary, Mr.
15 Gordon? That's my understanding.

16 MR. CARY: A. Yes, that's correct, Mr.
17 Straight.

18 Q. Thank you, Mr. Cary.

19 And, Dr. Euler, I promised a question for
20 you.

21 DR. EULER: A. I know and I have been
22 waiting all this time on pins and needles.

23 Q. This may have been in the material, I
24 wasn't too clear, for the effects/effectiveness
25 monitoring program with respect to the moose

1 guidelines, is it your intention to use the 130-hectare
2 provision for the size of clearcuts as contained in the
3 guidelines rather than the interim direction which
4 deals with deviation reporting?

5 A. Yes.

6 Q. Thank you.

7 A. That was easy, Ms. Seaborn.

8 Q. I didn't say it was going to be
9 difficult.

10 MS. SEABORN: Those are all my questions,
11 Mr. Chairman. Thank you, members of the panel.

12 THE CHAIRMAN: Thank you, Ms. Seaborn.

13 Well, ladies and gentlemen, we are
14 proposing to adjourn at this time to allow the Ministry
15 an opportunity to prepare for re-examination. We
16 understand, Ms. Murphy, that you will not be longer
17 than two hours; is that correct?

18 MS. MURPHY: That's correct, probably
19 less.

20 THE CHAIRMAN: If we then returned at
21 1:00, would that give you sufficient time to prepare?

22 MS. MURPHY: Yes, it would.

23 THE CHAIRMAN: Very well. We will
24 adjourn until one o'clock. Thank you.

25 ---Luncheon recess taken at 11:25 a.m.

1 ---On resuming at 1:10 p.m.

2 THE CHAIRMAN: Thank you. Be seated,
3 please.

4 MS. MURPHY: Mr. Chairman, I will be
5 filing one document.

6 MR. CASSIDY: Are you sure you are not
7 going to file 33?

8 MS. MURPHY: One. I will be filing one
9 document and I propose to do that right away so we
10 don't have to interrupt.

11 This is a letter or memorandum dated
12 September 26th, 1989. It is from Mr. A. J. Stewart who
13 is Regional Director in Algonquin Region and it is to
14 the district managers in Algonquin Region and to the
15 director.

16 (adjusting microphone)

17 All right, I think we are operating
18 again. And also to the Director of the Leslie Frost
19 Centre.

20 ---Discussion off the record

21 THE CHAIRMAN: That will be Exhibit 969.

22 ---EXHIBIT NO. 969: Memorandum from A.J. Stewart,
23 Regional Director of Algonquin
24 Region to district managers and
Director of Leslie Frost Centre,
dated September 26, 1989.

25 RE-DIRECT EXAMINATION BY MS. MURPHY:

1 Q. Now, Dr. Euler, you indicated to the
2 Chairman a couple of days ago that you did have some
3 concern about one answer that you gave to Mr. Hanna and
4 you suggested that you would like the opportunity to
5 expand on that. Why don't you just take that
6 opportunity now.

7 DR. EULER: A. Okay. Thank you very
8 much.

9 My concern, Mr. Chairman, is specifically
10 for the other wildlife. It would be, my concern is
11 that in the past the Ministry has not been able to
12 assure the Board or the public in fact that we are
13 providing habitat for all of the wildlife species that
14 are out there, and we have made our best estimate that
15 that is in the range of 70 per cent.

16 THE CHAIRMAN: You mean 30 per cent.

17 DR. EULER: Or 30 per sent, I am sorry
18 sir. And while my testimony is that we can never be
19 absolutely certain that one hundred per cent of the
20 species have habitat provided for, I think we can do
21 better and I have been advocating that internally
22 within the Ministry and I think the Ministry is
23 responding to that, albeit slower than I would wish and
24 I think slower than some of our critics would wish.

25 So part of the concern here is the speed

1 at which we are dealing with those issues, and it would
2 have been my value judgment to arrange this money in
3 such a way that we could have gone at that question a
4 little sooner than we are currently doing it; but, at
5 the same time, I think it's important to recognize that
6 those issues are recognized and we are moving on them.

7 And you have also heard in the course of
8 evidence the number of parties who are advocating that
9 we use various tools and techniques, and those are
10 issues that we need to discuss with some care and
11 concern.

12 But I think it's important that we
13 recognize as one of the outcomes of this hearing is
14 that the Ministry be encouraged to do the very best
15 they can to deal with all of the species of wildlife
16 that are in that forest and to move in all due speed to
17 get that done.

18 And we also talked about money, and one
19 of the problems with money is that if we get too much
20 money too fast it may not be spent properly. And the
21 concern here is that we move carefully and thoughtfully
22 in a measured way. And so that if more money comes our
23 way we have opportunity to plan for it, carefully and
24 thoughtfully, and that the Board I hope will encourage
25 that process, whether we use habitat supply analysis or

1 indicator species or whatever, that the goal is to
2 ensure that habitat is present for all the creatures
3 that are there as best we can.

4 THE CHAIRMAN: All right. In that light,
5 Dr. Euler, we heard evidence that when the evaluation
6 was being done and the budgets were being struck with
7 respect to how much money would be required, that there
8 wasn't any cap put on it per se at the outset, but that
9 the workshop participants used their best judgment as
10 to what was required to get the job done.

11 Now, given the Exhibit 936, I think it
12 was, that indicated what the breakdown was between
13 wildlife, other species, featured species, fisheries,
14 tourism, et cetera, and given the fact that you have
15 expressed some indication that you would like the speed
16 at which concerns with respect to the other 30 per cent
17 were addressed to perhaps improve, what in your view
18 would be required in terms of extra money to proceed at
19 the speed that you would like to see the Ministry
20 proceed, bearing in mind your last comment which was:
21 You can't have too much money at a particular time if
22 you can't properly utilize those funds in a measured
23 and well considered way?

24 DR. EULER: Well, you see we have had a
25 lot of very vigorous discussions within the Ministry on

1 that topic and if I could roll the clock back, see, I
2 would have allocated the money within the wildlife
3 program differently; I wouldn't have put as much money
4 into that moose program because that moose program is a
5 first rate program, it's excellent. But we already
6 have a certain amount of predictability there and I
7 would have put more of the money on those areas where
8 unknowns are truly unknown. We don't know how great
9 gray owls respond to timber management, we can't even
10 predict the direction.

11 The problem is that given all of the
12 things that have happened and the fact that we make
13 these decisions with very vigorous discussion and we
14 have a clear set of decisions there now, my advice now
15 is that we proceed on the way we are at about the level
16 of spending that we have allocated. And we can't turn
17 that clock back, so there's no point in crying over
18 decisions that might have been made in the past or who
19 said what about what, when and where.

20 THE CHAIRMAN: Let's work from now
21 forward.

22 DR. EULER: Well, I would advocate that
23 the current program of effectiveness monitoring be
24 continued the way it is.

25 THE CHAIRMAN: With that level of

1 funding?

2 DR. EULER: Yes. And what we will do
3 then, our next move is to have a workshop in early 1990
4 in which we bring in experts from everywhere that we
5 need to bring them in, and we sit down and we say:
6 What is a good program. We look at that very
7 carefully. And if after a thorough look at that
8 situation more money is needed, I think that we can
9 make a case through the Ministry that more money is
10 needed in that process. And I think that's the way to
11 handle it, and I think if we need more, it can be made
12 available in a more measured way that way.

13 THE CHAIRMAN: Will the results of that
14 workshop be in a form that whatever its recommendations
15 may be will be before this Board likely before we rise?

16 DR. EULER: Let me tell you what that
17 schedule is, because I'm not sure when you are going to
18 rise.

19 THE CHAIRMAN: I mean for good.

20 DR. EULER: I'm not sure when you are
21 going to rise for good. We are going to have that
22 workshop in early 1990, so that will be -- let's say
23 April, approximately April in which we bring together
24 these experts.

25 Following that there will probably be a

1 second workshop in which we outline the hypotheses and
2 the questions that need to be asked and estimate the
3 kinds of money that would be needed.

4 My best estimate is that we would finish
5 that plan late in calendar year 1990 and, of course,
6 when that is finished it will be available to the Board
7 and indeed part of the purpose of that workshop is to
8 make that plan widely available to the public so they
9 can see what we are doing, how they can be part of it
10 and where we would like to put more money to ensure
11 that we have a better percentage of the species habitat
12 needs provided for.

13 THE CHAIRMAN: Well, obviously we don't
14 know what the results of any such workshop are and, in
15 addition, we haven't heard the further submissions of
16 other parties on the issue, and presumably the Board
17 has no jurisdiction to order that money be provided.

18 DR. EULER: Mm-hmm.

19 THE CHAIRMAN: Having said that, the
20 Board probably has the jurisdiction to suggest in its
21 decision what level it considers appropriate bearing in
22 mind the evidence before it.

23 DR. EULER: That's right. And it would
24 probably be helpful, at least in my opinion, if the
25 Board encouraged the Ministry to take steps to provide

1 habitat for a greater percentage of the species than we
2 currently provide for.

3 THE CHAIRMAN: Okay. Thank you.

4 MS. MURPHY: Q. Thank you.

5 Now, Mr. Gordon, my friend Ms. Cronk
6 asked you a number of questions about second-year
7 survival assessments and that was at the beginning of
8 that cross-examination for OFIA. Do you recall that?

9 MR. GORDON: A. Yes, I do.

10 Q. And, in particular, you have been
11 asked to ascertain whether a specific figure for the
12 cost of second-year survival assessments could be
13 broken out from the new funding needs you discussed,
14 and you have undertaken to attempt to do that.

15 A. Yes, I will, yes.

16 Q. I just would like to ask you this
17 question: Given your understanding of the orders of
18 magnitude being considered in those funding estimates,
19 what is the likelihood that you will be able to
20 ascertain a specific figure or percentage attributable
21 to this particular type of survey?

22 A. It, in all probability, will be
23 fairly difficult and I haven't been able to confirm
24 this yet and it may not be an issue at all, because at
25 this point in time MNR is carrying out a fair number of

1 second-year survival assessments and, therefore,
2 there, therefore, may be enough of a sample out there
3 already to provide the database that is needed relative
4 to MNR projects on company units and Crown management
5 units for the state of the forest report.

6 So there is a possibility, and I just
7 haven't had a chance to confirm this, that the number
8 may be zero because what those tables are supposed to
9 indicate in Exhibit 936 are the additional dollars we
10 need to deliver those terms and conditions, and if
11 there are enough second-year survival assessments
12 ongoing right now, it may not be necessary to allocate
13 any more dollars towards those types of assessments.

14 Q. Thank you. Dr. Euler, we marked as
15 Exhibited 969 a memorandum from Mr. Stewart to the
16 district managers in Algonquin Region and to the
17 Director of the Leslie Frost Centre. Have you had a
18 chance to review that document?

19 DR. EULER: A. Yes, I have.

20 Q. Are you familiar with it?

21 A. Basically I am, yes.

22 Q. You were asked some questions by Mr.
23 Lindgren about a memorandum that was written by Mr.
24 Christie and that memorandum was sent to, among other
25 people, the Regional Director in Algonquin Region and

1 that discussed red-shouldered hawks. Do you remember
2 that?

3 A. Yes, I do.

4 Q. And are you aware of the relationship
5 between that document which is Exhibit 946 and the
6 document that has just been marked Exhibit 969?

7 A. Yes.

8 Q. Can you explain that, please?

9 A. Well, Mr. Christie is the head office
10 person and part of his job is to give guidance to
11 regional people about how to carry out duties of many
12 kinds actually and, in this case, Mr. Christie is
13 giving direction to field staff about how to deal with
14 the issue of red-shouldered hawks.

15 Then in turn, in this case, the Regional
16 Director, Mr. Stewart, would have received the memo
17 from Mr. Christie and Mr. Christie in turn would give
18 direction to - this is staff - about how to deal with
19 this issue.

20 So Mr. Stewart is saying to his district
21 managers, here's a problem and here's how I would like
22 you to deal with it.

23 Q. Thank you. Now, also with respect to
24 red-shouldered hawks, Mr. Lindgren was asking you some
25 questions about the inventory of red-shouldered hawks

1 and you were explaining to him that the Ministry is
2 moving on several fronts to inventory red-shouldered
3 hawks. Does this document assist in adding any
4 information to that comment?

5 A. Well, yes, it does. I think it gives
6 some of the details about what people actually did in
7 the field in response to these directions and
8 activities on several fronts.

9 So it points out, for example, during the
10 spring of 1989, all districts in the Algonquin Region -
11 and you should know that the Algonquin Region is very
12 good red-shouldered hawk habitat - so all districts in
13 that region undertook field surveys in preparation for
14 the timber management plans that they were working on.

15 Q. And it also indicates, as I
16 understand it, the results of that year's surveys; is
17 that right?

18 A. Yes, it does.

19 Q. Thank you.

20 THE CHAIRMAN: Dr. Euler, one question.
21 This was directed specifically to the Algonquin Region.

22 DR. EULER: Yes.

23 THE CHAIRMAN: And you are indicating
24 that that is an area frequented by these particular
25 species.

1 DR. EULER: Yes.

2 THE CHAIRMAN: What about all the other
3 regions where red-shouldered hawks are prevalent, would
4 they have also gotten similar direction?

5 DR. EULER: Yes, they would have and the
6 Algonquin Region would be the centre of red-shouldered
7 haw activity, however, there are also red-shouldered
8 hawks in our eastern region and a few in just the lower
9 part of our northeastern region.

10 THE CHAIRMAN: So effectively the
11 instructions would be essentially the same to all
12 regions?

13 DR. EULER: Yes, that's right.

14 THE CHAIRMAN: And the instructions going
15 then from the Regional Director to his is field staff
16 would be essentially parodying or the same throughout?

17 DR. EULER: Basically yeah, sure. Now,
18 it just isn't as big a problem in the other regions
19 because only little sections of the region have
20 red-shouldered haw, so the Regional Director might not
21 think it was necessary to write every single because
22 some districts don't even hawks there themselves.

23 THE CHAIRMAN: Okay. But I guess what
24 I'm trying to ascertain is, is that once sort of in the
25 wildlife section goes out to the field at large, it

1 becomes a coordinative response; is that correct?

2 DR. EULER: Yes, that's correct.

3 THE CHAIRMAN: So wherever these species
4 are likely to occur--

5 DR. EULER: Yes, yes.

6 THE CHAIRMAN: --the same type of action
7 would also take place?

8 DR. EULER: Yes. Yes, that's right.

9 THE CHAIRMAN: Thank you.

10 DR. EULER: Then as we learn more about
11 how to do it, because one of the things that is going
12 to happen here, is we are going to learn more because
13 of this process, then we will through another iteration
14 of learning and bringing that knowledge into the
15 management process.

16 MS. MURPHY: Q. And again, Dr. Euler,
17 I'm going to ask you to look at Exhibit 948.

18 MS. MURPHY: And, Mr. Chairman, I have
19 asked to have that provided to you. I would like you
20 to have a look at one particular matter on that
21 exhibit, that is a letter from Gord Pyzer to Dr. Ross
22 Henderson and that was discussed in the
23 cross-examination by Mr. Lindgren.

24 MRS. KOVEN: What is the exhibit number?

25 MS. MURPHY: It's Exhibit 948.

1 MS. BLASTORAH: Mr. Chairman, I spoke to
2 Mr. Devaul and I think she put it in the pile there for
3 you.

4 THE CHAIRMAN: Well, she put some in a
5 pile, but my pile is all messed up.

6 MS. BLASTORAH: Okay.

7 THE CHAIRMAN: Well, it could be anywhere
8 in the vicinity in the northern region.

9 MS. MURPHY: Well then, perhaps we can do
10 without the document and I would just like to point
11 out --

12 MS. BLASTORAH: I have an extra copy.
13 (handed)

14 MS. MURPHY: Fine. Mr. Chairman, this is
15 really for the purposes of the record. The first page
16 of that letter indicates in the first paragraph on the
17 fifth line that the letter is being sent in response to
18 the concerns of Dr. Henderson and similar concerns
19 forwarded by the Fairlane Environmental Protection
20 Association.

21 And for the purposes of the record, Mr.
22 Chairman, I would like you to make note that the
23 Fairlane Environmental Protection Association is a
24 party to this hearing and is listed on the parties
25 list.

1 Q. And, Dr. Euler, with respect to this
2 particular matter and the questions that were put to
3 you, what personal knowledge if any do you have about
4 the specific issues that may have arisen between that
5 specific group and the Ministry of Natural Resources
6 district office in Kenora?

7 DR. EULER: A. Oh, I would have no
8 personal first-hand knowledge other than just this
9 letter right here.

10 MS. MURPHY: And just for your
11 information, I have ascertained that there is a lengthy
12 file with respect to this matter, and I certainly don't
13 have no intention of getting that and asking Dr. Euler
14 about it, and I would suggest that we would deal with
15 that matter in Kenora as there are a number of details
16 that should be covered, as I understand it.

17 Q. With respect to the questions that
18 were put, I do have one hypothetical question I would
19 like you to deal with.

20 Mr. Lindgren made a suggestion to you
21 with respect to one of the species listed on the second
22 page, the greater rattlesnake plantain. He asked you
23 whether you agreed with him that that species is not
24 known between Saskatchewan and Lake Superior, and you
25 suggested that you couldn't answer that from memory,

1 but do you recall that exchange?

2 DR. EULER: A. Yes, I do.

3 Q. All right. For the purposes of my
4 question, will you assume that he is right, that the
5 greater rattlesnake plantain is not known to exist
6 between --

7 THE CHAIRMAN: This is a plant or an
8 animal?

9 MS. MURPHY: This apparently is a plant,
10 sir.

11 DR. EULER: I can confirm it's a plant,
12 sir, if that is helpful.

13 MS. MURPHY: Dr. Euler, can give you all
14 kinds of interesting names for plants.

15 DR. EULER: And birds.

16 MS. MURPHY: Q. And birds. Let's assume
17 that he is right, that that plant is not known to exist
18 between Saskatchewan and Lake Superior, okay?

19 DR. EULER: A. Yes, all right.

20 Q. Now, given that assumption, as a
21 manager, would your response be different in two sets
22 of circumstances.

23 First, a person in Kenora approached you
24 and advises that he or she has located an occurrence of
25 that species; and, second, a person in Kenora has not

1 located an occurrence of this species which is not
2 known to exist between Saskatchewan and the lake, but
3 suggests that you survey the management units to look
4 for it in any event.

5 Would your management response differ in
6 those two sets of circumstances?

7 A. Yes.

8 Q. And can you explain that, please?

9 A. Well, okay. In the first set of
10 circumstances where I think the person is telling me
11 that the plants exists out there, I would ask for
12 evidence to try to see whatever evidence the person is
13 presenting.

14 THE CHAIRMAN: What if they bring in the
15 plant, the plant you're looking for?

16 MS. MURPHY: I would hope they wouldn't.

17 MS. BLASTORAH: It would get on the
18 endangered species list.

19 THE CHAIRMAN: I guess that wasn't a fair
20 question.

21 DR. EULER: That's all right, Mr.
22 Chairman, you are allowed those, I think.

23 Well, see, you would ask for some sort of
24 evidence and then you would make a judgment based on
25 the evidence about the credibility of the claim. I

1 mean, many people say many things to the Ministry and
2 you have to make some kind of judgment about the
3 credibility of the claim.

4 But then assume that it was valid and you
5 felt that the person has reasonable grounds to believe
6 it was there and that it was very possibly there, well
7 then you would undertake an AOC planning process for
8 it.

9 MS. MURPHY: Q. Mm-hmm.

10 DR. EULER: A. That would be my reaction
11 as a manager, put it in the AOC planning process and
12 deal with it depending on the technical details.

13 Now, the other problem, if someone says
14 it might be there and why don't you do a survey, would
15 trigger a little different set of responses, in that
16 you would have to evaluate your capability to do that
17 survey and do you have the money, do you have the time.
18 You would have to evaluate whether you could do it, you
19 would have to look in the current literature and see
20 what the probability of it being there was, and then
21 you would make a different decision.

22 You might well conclude, for example,
23 after reviewing the evidence carefully that the cost of
24 a survey weren't justified because the evidence that
25 was presented was just not that compelling. That could

1 be a conclusion. On the other hand, if you concluded
2 that the evidence was compelling that it had a
3 reasonable probability of being there, then you would
4 do whatever you could to get that survey done somehow,
5 maybe through naturlists or through your money or
6 however.

7 Does that answer your question?

8 Q. Yes, thank you.

9 Mr. Gordon, Mr. Edwards asked you a
10 number of questions about a particular matter that
11 involved a regeneration agreement. He was asking you
12 about what would occur in a certain situation when the
13 Ministry suggested entering a regeneration agreement
14 with a licensee and the licensee, in that particular
15 situation, could not or it was not interested in
16 entering that agreement.

17 MS. MURPHY: And we are concerned that
18 perhaps the concept of regeneration agreements may not
19 be all that well understood. Can we look first of all
20 at the Crown Timber Act, I believe your legislation was
21 brought before you. I don't know if you will need it,
22 but I want to indicate for you a section.

23 THE CHAIRMAN: We exhibited that, didn't
24 we?

25 MS. MURPHY: Yes, that's right. It's in

1 Exhibit 918 I believe, the legislation.

2 THE CHAIRMAN: Okay. Ms. Blastorah, if
3 you ever want to see this again (handed) grab it now.

4 MR. CASSIDY: Ransom demand.

5 MS. BLASTORAH: You must have the same
6 filing system as Mr. Freidin.

7 MS. MURPHY: Q. I just to bring your
8 attention to one particular section of the Crown Timber
9 Act, section 27 sub (4), that indicates that:

10 "The Minister may enter into an agreement
11 with a licensee for the promotion and
12 maintenance of the productivity of the
13 licence area by establishing regenerating
14 and tending forests and employing
15 silvicultural cutting systems to
16 regenerate forests."

17 And do you understand that section to be
18 the one that is referring to generally regeneration
19 agreements?

20 MR. GORDON: A. That's my understanding.

21 Q. Do you think you can give us a short
22 explanation of regeneration agreements, what they are,
23 in what circumstances they are used, and who gets
24 involved in them?

25 A. I suppose the simplest thing for me

1 to do is speak from my own experience. Obviously as
2 much as possible the Ministry of Natural Resources
3 wants to see companies involved in the regeneration
4 effort and obviously that is one of the main reasons
5 for the FMA program.

6 However, historically we didn't have the
7 FMA program in place and, as well, it's not in place on
8 every unit. And the Ministry of Natural Resources
9 still, however, would like to see some of those non-FMA
10 companies, if possible, involved in the regeneration
11 program.

12 And, for example, what we did in Terrace
13 Bay District is we approached a company in the late
14 1970s and asked them to participate in the site
15 preparation program, and so they signed a regeneration
16 agreement with us. We negotiated a cost per hectare
17 for doing the site preparation work and then the
18 company carried out that work.

19 THE CHAIRMAN: Mr. Gordon, I take it the
20 agreement dealt with in this section 27(4) is not the
21 same thing as an FMA agreement?

22 MR. GORDON: Definitely not.

23 THE CHAIRMAN: Right. And you are
24 indicating that you want some of these non-FMA
25 agreement holders to enter into regeneration agreements

1 are. You would like them to participate in that kind
2 of program; is that what you said?

3 MR. GORDON: That's correct. For
4 example, you know, in a given part of the province or
5 in a given management unit you may have trouble
6 attracting certain types of equipment to carry out site
7 preparation.

8 THE CHAIRMAN: Okay. Well, I guess my
9 question is, is that you have got the section, you have
10 got the statutory authority for the Minister to enter
11 into these agreements, why is it not tougher than that,
12 why is it not a section which indicates that the
13 company, if the Minister deems it appropriate, shall
14 enter into a regeneration agreement; why is it left as
15 loose as giving the company the option of saying: " We
16 are just not interested, and why isn't that tied into
17 the Ministry granting the allocations in the first
18 place and saying to itself that, if we are going to let
19 you cut and carry on activities, we also feel that you
20 should be involved in regeneration, site preparation
21 activities and that sort of the other side of the
22 allocation considerations that we enter into?

23 MR. GORDON: I don't know if I can really
24 answer that. I would assume that it was written that
25 way for historical reasons. I would suggest to you

1 that the emphasis of the Crown Timber Act was to
2 authorize the cutting of Crown timber.

3 THE CHAIRMAN: Right, and I think you are
4 probably right, it is historical, but we are past the
5 historical stage in the sense that you have the FMA
6 program in existence now for a few years, I mean, why
7 for instance hasn't there been consideration to having
8 this amended?

9 MS. MURPHY: Perhaps if I ask a couple of
10 questions arising from your questions it might help,
11 because there is, as it seems to me, clearly some
12 confusion over what this regeneration agreement is
13 intended to do.

14 Q. Would you agree with me essentially
15 that the regeneration agreement is a contract?

16 MR. GORDON: A. Yes.

17 Q. When the licence holder undertakes
18 the activities they paid?

19 A. Yes.

20 Q. Are those activities activities that
21 the Ministry in those Crown and company management
22 units would have normally undertaken by entering into a
23 contract with any other person?

24 A. Normally that will be the case, yes.

25 Q. As I understand it, and perhaps to

1 help to clarify, the main point here is that where the
2 Ministry intends to enter into a contract with the
3 licensee who is already on the unit, the statute allows
4 them to do that without going through a tendering
5 process.

6 A. That's correct. That's correct.

7 Q. And that there may be, in certain
8 circumstances, a benefit to having the licence holder
9 who is already on the unit carry out the work rather
10 than some other contractor; is that the point?

11 A. That's correct. Obviously there
12 could be and have been cost efficiencies for the
13 Ministry because that company may have some available
14 tractor time, they have got tractors there to build
15 roads, et cetera, and therefore --

16 THE CHAIRMAN: Yes, but isn't it more
17 than that? I mean, I think the Board appreciates the
18 contractual obligations, the tendering process and all
19 of that. Isn't there a psychological reason for having
20 companies who are also engaged in harvesting involved
21 in the putting back?

22 MR. GORDON: Yes, I would agree.

23 THE CHAIRMAN: Involved in the site
24 preparation and the necessity of having to regenerate
25 and the necessity of doing it right in terms of the

1 taking away, the harvesting, or they are going to be
2 nailed with the additional cost if their regeneration
3 efforts fail?

4 MR. GORDON: That's correct. And that is
5 why we have the FMA program, and I guess the difference
6 perhaps between you and myself right now might be just
7 as to how far we are going to push the FMA program.

8 THE CHAIRMAN: Well, that is why I asked,
9 the two agreements are different and you may not want
10 to include all of the other obligations within a full
11 FMA program and expand it too quickly before you can
12 administratively perhaps even handle it, but that in
13 the Board's view doesn't necessarily answer the
14 question why the regeneration agreements for non-FMA
15 holders should not almost be made part of the package
16 in getting their allocations to get them involved in
17 the regeneration side, without necessarily allowing
18 them the option of saying: We will cut and we will do
19 it in accordance with timber management plans but we
20 don't want to take part in either site preparation or
21 regeneration, because we are not going to enter an
22 agreement with you.

23 MR. GORDON: Yeah. I really can't say
24 much more than that. I know on some units -- excepting
25 that on some units we have got very small operators who

1 can only afford to buy their harvesting equipment.

2 THE CHAIRMAN: Well, you know, exceptions
3 can be made. We are talking about the ones where you
4 yourself have said, you have approached them to do it
5 because you think that they (a) have got the equipment,
6 could probably do the job, psychologically maybe should
7 be involved in that program, but for whatever reason
8 they say: Thanks, but no thanks. It's that situation
9 that I'm questioning.

10 MR. GORDON: Well, very clearly it's my
11 understanding we don't have a big stick.

12 THE CHAIRMAN: Maybe you should. Okay.

13 MS. MURPHY: Q. Well, just two things
14 then. In your experience, what would be the reason
15 first of all that the licensee may decline that
16 opportunity?

17 MR. GORDON: A. The reason that the
18 licensee declined the opportunity in Terrace Bay
19 District was that for the work that the Ministry was
20 asking them to do, the equipment that was necessary was
21 already allocated to doing other things.

22 Q. And are there situations where the
23 Ministry might decline that opportunity?

24 A. Yes. Obviously there may be
25 instances where we do not want to enter into with a

1 company because it may cost us more.

2 Q. Thank you. Again, Mr. Gordon. My
3 friend Ms. Seaborn was asking you some questions, these
4 were questions about local monitoring, and she was
5 suggesting to you that for the purposes of reporting
6 you could, I think to use her term, roll up compliance
7 effects and effectiveness monitoring, and suggested to
8 you that it didn't matter about the terminology.

9 My question to you is this: Is the
10 distinction between compliance effects and
11 effectiveness monitoring simply a matter of terminology
12 or semantics, or is it a matter of substance?

13 A. It's very clearly a matter of
14 substance.

15 Q. Does the use of one of those terms or
16 in what way would the use of one of those terms
17 influence what the person on the ground thought they
18 were being expected to do?

19 A. Well, for example, if you were asking
20 someone, a technician who ought to do compliance
21 monitoring, I would suggest that that is fairly
22 straightforward and you may not need a person of great
23 experience to do that: Did the company cut in the
24 right place, did they cut the reserve around the lake,
25 that person, all they would have to do is be able to

1 read a map and get to that location and understand what
2 area is under approval.

3 To assess the effects of that operation
4 on the site or the effectiveness of the prescription
5 around the lake to protect the lake for whatever
6 reason, I would suggest that it requires another level
7 of thinking, and there is no question some of our
8 people are very capable of that level of thinking, but
9 we are going to have an awful lot of people out there
10 doing good compliance monitoring who don't have that
11 capability to do effects and effectiveness monitoring.

12 And, where possible, because we are
13 trying to work on efficiencies, where possible, we will
14 be trying to provide training to those individuals so
15 they can do that much more when they are out there on
16 the site.

17 Q. But you would you be expecting them,
18 as I understand your evidence, to be doing something
19 qualitatively different?

20 A. That's correct.

21 Q. Thank you. Again, Mr. Gordon. From
22 Ms. Seaborn there was a suggestion that if an effect is
23 unacceptable - and I will use her terms in quotes - "if
24 an effect is unacceptable", she suggested you could
25 change your guidelines or your compliance requirements.

1 Now, in response you indicated that you
2 could change your timber management plan, and I
3 understood from my notes that you said you could change
4 your timber management plan objectives, but in any
5 event the change your timber management plan and
6 monitor compliance with that.

7 A. That's correct.

8 Q. Ms. Seaborn then repeated, and as my
9 notes indicate: Then is that the same thing, you could
10 change your guidelines or your compliance requirements,
11 and you agreed.

12 Could you please indicate for me in that
13 context what the phrase 'compliance requirements' meant
14 to you?

15 A. Well, I looked at it very simply and
16 what I assumed the discussion was meaning was, you have
17 detected in the past five years a problem and,
18 therefore, in your new plan you have decided you are
19 going to go in a different direction relative to
20 specific circumstances; and, therefore, once that plan
21 is approved you have to deliver that plan and, so
22 therefore, you would be monitoring compliance against
23 that new plan.

24 Q. So the compliance requirements that
25 you were talking about there were the things you would

1 have to do in order to monitor compliance with the
2 plan; is that right?

3 A. You would be monitoring compliance to
4 ensure consistency with that new plan.

5 THE CHAIRMAN: But the new plan would
6 have to have been approved in accordance with the
7 guidelines, and if you are going in a different
8 direction you would probably have had to have changed
9 the guidelines; is that not correct?

10 MR. GORDON: No, I don't think that is
11 the case. Obviously if you want to go in a major new
12 direction, which is outside the bound of the
13 guidelines, then either the guidelines -- whatever
14 guidelines we are talking about would have to be
15 changed or you would have to -- and if they hadn't been
16 changed to allow you to do this and you still wanted to
17 do that, then you would have to highlight that in the
18 plan and let that go up through the approval process.

19 THE CHAIRMAN: Okay. Get approval for
20 deviation from the guidelines?

21 MR. GORDON: That's right.

22 THE CHAIRMAN: In the new plan.

23 MR. GORDON: That's right.

24 THE CHAIRMAN: Okay.

25 MR. MARTEL: Or you could change the

1 prescription.

2 MR. GORDON: Yeah. I was thinking of the
3 change, without anything in mind, at a much lower
4 level, you know, where you plan to do something and
5 there may be certain sites where you wanted to plant
6 them in the past five-year plan, you had found that for
7 whatever reason it hadn't been effective and,
8 therefore, you wanted to do something slightly
9 different in the new plan. It didn't go against any
10 guideline but once you set that new objective you would
11 monitor compliance against it.

12 MS. MURPHY: Q. Mr. Cary, Ms. Seaborn
13 suggested to you the possibility of putting the area
14 inspection report form in the Timber Management
15 Planning Manual; do you recall that?

16 MR. CARY: A. Yes, I do.

17 Q. I have a question. First of all,
18 what difference is there, if any, in kind between the
19 area inspection report forms, cut inspection report
20 forms, free to grow assessment report forms, survival
21 assessment report forms or other forms that might be
22 used for technical surveys?

23 A. There is no difference, they all
24 report things.

25 Q. And, from your experience, how common

1 is it for forms of this nature to be revised?

2 A. They are revised from time to time.
3 When an update is needed or when some circumstances
4 change, then the forms are revised.

5 Q. Thank you.

6 THE CHAIRMAN: Is the only purpose of
7 putting it in the manual to ensure consistency across
8 the province?

9 MR. CARY: No. We can achieve
10 consistency in other ways by putting it into policy and
11 procedure.

12 THE CHAIRMAN: That's right. But I mean,
13 what would the advantage be of having the actual
14 wording of the form in the manual?

15 MR. CARY: No distinct advantage.

16 MS. MURPHY: Thank you.

17 THE CHAIRMAN: But having said that,
18 could a statement be made in the manual, like not have
19 the form, but reference be made to the fact that there
20 will be area inspections and there will be a summary
21 like a textual description as to what the major
22 components of the form would be without having the
23 actual form in there?

24 MR. CARY: That would be a good
25 suggestion.

1 THE CHAIRMAN: Because I think what Ms.
2 Seaborn's concern is, is that there be a requirement
3 that this summary be carried out in terms of a set
4 format. Is that --

5 MS. MURPHY: No, we are talking about two
6 different documents. The area inspection report form
7 is one thing, the summary you were talking about, Table
8 4.12.X, is the summary.

9 THE CHAIRMAN: But both I think Ms.
10 Seaborn, as I understood it, was worried about the
11 format.

12 MRS. KOVEN: She was worried about the
13 fact that area inspection forms don't find their way
14 into the timber management plan in tabular form whereas
15 Table 4.12.X would, and it would be easier for the
16 public to follow.

17 MS. MURPHY: I think we are talking about
18 a couple of different issues.

19 Q. There was one question - and correct
20 me if I'm wrong - there was one question, would the
21 format for Table 4 -- what is now called Table 4.12.X,
22 would the format for that table find its way into the
23 Timber Management Planning Manual, and the answer to
24 that question was yes.

25 MR. CARY: A. Yes.

1 MS. MURPHY: And that table will be in a
2 timber management plan and, therefore, the format for
3 that table will be in the Timber Management Planning
4 Manual.

5 THE CHAIRMAN: Right. Now we are dealing
6 with the reports.

7 MS. MURPHY: There was a separate
8 question, would the form for area inspection reports,
9 that form, be put into the Timber Management Planning
10 Manual. That is a separate question.

11 And the Chairman's question in the end
12 was: What would be the value of doing that. And I
13 believe the witness said he didn't know of the value of
14 putting the area inspection report --

15 THE CHAIRMAN: But I thought Ms.
16 Seaborn's concern with that - perhaps you could just
17 answer, Ms. Seaborn - is that you want to ensure that
18 the format of the report, not the summary, is always
19 consistent across the province and, therefore, if it
20 were in the manual that would be a direction to
21 everybody in the field, that is the way you complete a
22 report; like, that is what the form for the report
23 looks like, and it's annexed. Is that --

24 MS. SEABORN: Certainly that is our
25 concern, Mr. Chairman. It may be that your suggestion

1 that an outline of what should be involved in terms of
2 an area inspection report and a summary form in the
3 manual would be good enough.

4 Our concern is that at the end of this
5 process what is going to survive the approval is going
6 to be the Timber Management Planning Manual as the
7 guiding document to show a common planning process
8 across the area of the undertaking.

9 So in the example of area inspection
10 forms, if this is in fact a vital component of
11 monitoring for the Ministry, then we would like to see
12 some consistency across the area of the undertaking.

13 THE CHAIRMAN: Well, certainly the manual
14 will be one of the principal documents that survive,
15 but I wouldn't suggest that it's the only one that will
16 survive this hearing.

17 MS. MURPHY: Absolutely.

18 MS. SEABORN: No, but it's going to be
19 the means. As I understand MNR's position, is that
20 they do not want to amend the blue book, the Class EA,
21 they want to amend the Timber Management Planning
22 Manual and along with that will be the terms and
23 conditions.

24 THE CHAIRMAN: Well, nothing has been
25 determined on that yet, you know, I think this will be

1 the subject of some discussion at the end of the case.
2 And the Board - it hasn't really thought its way
3 through all of this obviously - but the Board might
4 well order or request that the EA be amended
5 accordingly in accordance with the Board's decision if
6 the Board's decision alters substantially parts of the
7 EA, so that you end up at the end of the day with a
8 document, as well as other documents like the manual.
9 much more in the form of an EA that has not gone
10 through the hearing process.

11 MS. SEABORN: I understand that, Mr.
12 Chairman, and the reason why our questions are put in
13 the context of the Timber Management Planning Manual is
14 keeping in mind MNR's desire in their terms and
15 conditions to amend that manual and append terms and
16 conditions to it rather than to amend the Class EA.

17 MS. MURPHY: And if I might respond, if
18 the concern is that this kind of report with certain
19 essential elements should be consistent, then I will
20 suggest to you and will argue that that belongs in the
21 terms and conditions of approval which is the thing
22 that will survive this environmental assessment, a
23 condition that says --

24 THE CHAIRMAN: Among other things.

25 MS. MURPHY: Well, certainly but...

1 THE CHAIRMAN: Including all of us, for
2 instance.

3 MS. MURPHY: Well, I hope so. I'm
4 trying. But I would suggest to you that is essentially
5 there that the elements that are required should be
6 found in the terms and conditions of approval.

7 THE CHAIRMAN: Well, we will sort that
8 out at a later date.

9 MS. MURPHY: Thank you.

10 THE CHAIRMAN: I think the real concern
11 here is consistency of application across the area of
12 the undertaking.

13 MS. MURPHY: Q. Now, Mr. Cary, Ms.
14 Seaborn was also asking you some questions about Table
15 4.12.X and your evidence has been that that table
16 essentially reports the results of inspections on all
17 areas of concern over a five-year period; is that
18 correct?

19 MR. CARY: A. That's correct.

20 Q. In your evidence-in-chief, Mr. Cary,
21 you indicated that there was a range between -- I
22 believe your evidence-in-chief was between 10 and 200
23 areas of concern inspected per year?

24 A. That's right.

25 Q. And in response to an enquiry from

1 Mr. Lindgren you agreed that in some areas that would
2 mean over the five-year period a thousand areas of
3 concern?

4 A. I believe that is what I said.

5 Q. And is it your information that there
6 could be a thousand areas of concern over a five-year
7 period?

8 A. Yes, and in fact some information
9 that I have reveals that a draft timber management plan
10 for the Dog River/Mattawan FMA contains 1438 areas of
11 concern for the five-year term.

12 THE CHAIRMAN: What was the name of that
13 area?

14 MR. CARY: The Dog River --

15 THE CHAIRMAN: Dog River.

16 MR. CARY: D-o-g, Dog River/Mattawan
17 forest management Agreement, it's a draft timber
18 management plan at this point in time.

19 MS. MURPHY: Q. And I also understand
20 from your evidence-in-chief that it is possible that
21 there would be more than one area inspection report for
22 an individual area of concern; is that correct?

23 MR. CARY: A. That's correct.

24 Q. Mr. Cary, of a practical matter, how
25 does that information influence the amount of detail

1 that could reasonably be provided in a table format?

2 A. It would make the table
3 pretty unmanageable. We have to use a summary form in
4 the report of past forest operations. It would be a
5 mountain of paper, a huge amount of area inspection
6 reports and it would become an absolute -- it would
7 become very difficult to handle and very difficult to
8 understand.

9 Q. And a similar question to Mr. Gordon
10 about normal operating areas. I understood from Ms.
11 Seaborn that she was enquiring of you about the ability
12 to report results of all area inspection reports, free
13 to grow assessments, second-year survival assessments,
14 and other technical surveys at the stand level in a
15 table format in a timber management plan. Do you
16 recall those questions?

17 MR. GORDON: A. Yes, I do.

18 Q. I understand that you were involved
19 in the development of a timber management plan for the
20 Big Pic Management Unit; is that correct?

21 A. That's correct.

22 Q. And was there a development during
23 that plan of a stand listing?

24 A. Yes, there was.

25 Q. And I am going to ask you to reach

1 back in your memory and try to assist all of us by
2 giving us some idea in that plan, for example, how many
3 stands we are talking about.

4 How many stands would have been scheduled
5 for operations over the five-year period in that timber
6 management plan, for example?

7 A. A lot, and in the order of -- very
8 difficult, but maybe 5- to 10,000 stands.

9 Q. Thank you. Would that understanding
10 influence your recommendation to this Board as to
11 whether the results of all inspections on all of those
12 stands should be listed in a timber management plan?

13 A. I would suggest - although I know
14 someone has said that everything is possible - I would
15 suggest that that's an impossiblity.

16 Q. Thank you. Dr. Euler, Ms. Seaborn
17 asked you a question. Unfortunately it was right at
18 the end of her cross-examination and I don't think I
19 actually got it down right and I hope you can help me
20 with it.

21 I understood that Ms. Seaborn was asking
22 you, in the study with respect to the moose guidelines
23 would you be using the moose guidelines which make
24 reference to 130 hectares or would you be using the
25 interim direction which is essentially a reporting

1 requirement? Do you remember that question?

2 DR. EULER: A. Yes, I do.

3 Q. Can you explain to me whether there
4 will be more than one size of clearcut in the areas
5 that will be studied in that assessment?

6 A. Well, the study areas have not yet
7 been picked. It is certainly very possible that there
8 will be other sized clearcuts in the study areas, very
9 possible.

10 Q. So I was just confused. I was not to
11 take your answer to mean that all clearcuts, for
12 example, in the study area would be 130 hectares?

13 A. Well, that's true. See, while there
14 are several things going on here in that the interim
15 guidelines are a reporting relationship and they don't
16 really affect the recommendations in the guidelines,
17 It has to do with what you report to which Assistant
18 Deputy Minister, and what we are trying to do is test
19 the principles that are in the guidelines and one of
20 those principles is that based on knowledge we have 130
21 hectares seems to be the most optimum clearcut size.

22 Well, we want to test that principle and
23 get some knowledge about it: Is it true, does it hold
24 up over a variety of circumstances and situations.

25 And so in testing it you may do several

1 things on the ground that that may involve clearcuts of
2 different sizes. And so it was a little difficult to
3 answer that question. I answered it with just a
4 straight yes because I felt that was the best way to
5 answer it the way it was put.

6 It is going to be hard to find study
7 areas that are perfectly laid out based on the
8 guidelines, for example, because it is very seldom that
9 the guidelines are actually applied in their strictest
10 of application.

11 Q. And if you were to attempt to assess
12 that concept in the guidelines, would you of necessity
13 have to look at clearcuts of various sizes?

14 A. Well, yes, that would be -- yes, you
15 would. Yes, indeed. Now, whether we can get all that
16 we need and just exactly how many we will see and
17 exactly what their sizes are, it is very difficult to
18 predict, but the principle is there.

19 MS. MURPHY: Okay, thank you. Just one
20 moment. Just before I finish, I haven't had a chance
21 to talk to you. Does anyone here have any undertakings
22 that they would like to get rid of before we go away?

23 (no response)

24 No. Oh, that's unfortunate.

25 I would like on the record that there are

1 a number of witnesses here who owe me Christmas
2 presents. And those are all my questions.

3 THE CHAIRMAN: Thank you, Ms. Murphy.

4 Thank you, Panel. You will be delighted
5 to be finished with your task. I don't know how many
6 of you we will see again throughout the rest of the
7 case, but the Board appreciates your attendance and
8 wishes you the best for the holiday season.

9 Thank you.

10 THE PANEL: Thank you.

11 --- (Witness panel withdraws)

12 THE CHAIRMAN: Very well, ladies and
13 gentlemen, we will adjourn for the week and we will be
14 commencing at 9:00 a.m. at the Board's hearing room on
15 Monday.

16 Thank you.

17 ---Whereupon the hearing adjourned at 2:20 p.m., to be
18 reconvened on Monday, December 4th, 1989, commencing
19 at 9:00 a.m., at the Offices of the Environmental
Assessment Board, Toronto, Ontario.

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